Supreme Court, U.S.
FILED
JAMES R. BROWNING, Clerk

No. 391

Vol. I - Pages 1-332

TRANSCRIPT OF RECORD

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 17071

GEORGE B. PARR, D. C. CHAPA, B. F. (TOM) DONALD, JR., JESUS G. GARZA, SANTIAGO GARCIA, OCTAVIO SAENZ, JESUS OLIVEIRA, O. P. CARRILLO, OSCAR CARRILLO, SR., TEXAS STATE BANK OF ALICE, ALICE, TEXAS, and SAN DIEGO STATE BANK, SAN DIEGO, TEXAS,

Appellants,

-versus-

UNITED STATES OF AMERICA,

Appellee

Appealed from the United States District Court for the Southern District of Texas

U. S. COURT OF APPEALS
FILED
JUN 2 1958

ALPHA LAW BRIEF CO., 402 M & M BLDG., HOUSTON 2

(Original Record Received _____ 19____.)

EDWARD W. WADSWORTH
CLERK

APPELLANTS' DESIGNATION OF RECORD ON APPEAL

(Caption Omitted)

(filed, Oct. 9, 1957)

Appellants, George B. Parr, D. C. Chapa, B. F. (Tom) Donald, Jr., Jesus G. Garza, Santiago Garcia, Octavio Saenz, Jesus Oliveira, O. P. Carrillo, Oscar Carrillo, Sr., Texas State Bank of Alice, Alice, Texas, and San Diego State Bank, San Diego, Texas, designate the following portions of the record, proceedings and evidence, to be contained in the record on appeal in this case:

1) Indictment—filed 3-6-1956.

2) Motion to Quash and Dismiss Indictment—filed 6-15-56.

3) Motion for Bill of Particulars—filed 6-15-56.

4) Motion for Change of Venue and to Transfer Proceeding to the Corpus Christi Division—filed 6-15-56.

5) Motion to Produce and Permit Defendants to Inspect, Copy or Photograph Documents, Books, Papers and Objects—filed 6-15-56.

6) Affidavits in Support of Motions mentioned in Items 2, 3, 4 and 5 above, and particularly in support of Item 4, that is, Motion for Change of Venue and to Transfer Proceeding to the Corpus Christi Division, of the following named persons:

B. F. (Tom) Donald;
Jesus Garza;
D. C. Chapa;

Santiago Garcia;
Octavio Saenz;
Jesus Oliveira;
O. P. Carrillo;
O. Carrillo, Sr.;
Wallace Roach;
R. W. Milligan; and
Hilda Chapa Gonzalez.—Filed 6-22-56.

7) Government's Answers to Defendants' Motions to Quash and Dismiss Indictment, for Bill of Particulars, for Change of Venue, and to Produce and Permit Defendants to Inspect, Photograph or Copy Documents, Books, Papers, Objects, etc., with attached Exhibits and Affidavit of Malcolm R. Wilkey, United States Attorney—filed 7-9-56.

8) Memorandum Opinion of Court on Motions to Quash and Dismiss Indictment, for Bill of Particulars, for Change of Venue, and to Produce and Permit Defendants to Inspect, Photograph or Copy Documents, Books, Papers, Objects, etc.; and order of the Court thereon and setting case for trial on November 5, 1956.

9) List of Government's Exhibits filed 12-18-56.

10) List of Defendants' Exhibits filed 12-18-56.

11) Order granting motion for mistrial, 3-12-57.

12) Motion to Dismiss Certain Counts of the Indictment, Pleas of Res Judicata, Double Jeopardy, &c. —filed 3-18-57.

13) Judgment entered in connection with first trial of this case—filed 3-18-57.

14) Order overruling motions and pleas of Defendants to dismiss certain counts of indictment, pleas of res judicata, double jeopardy, etc.—filed 3-19-57.

15) Order granting mistrial—3-20-57.

16) Defendants' First Motion for Judgment of Acquittal—filed 6-25-57.

17) Order overruling Defendants' First Motion for Judgment of Acquittal—6-25-57.

18) Defendants' Second Motion for Judgment of Acquittal—filed 7-3-57.

19) Defendants' First Motion to Compel Election—filed 7-3-57.

20) Defendants' Second Motion to Compel Election—filed 7-3-57.

21) Defendants' Motion for Written Charge—filed 7-3-57.

22) Defendants' Motion for Use of Written Charge in making Objections to the Charge—filed 7-3-57.

23) Order overruling Defendants' Second Motion for Judgment of Acquittal—entered 7-3-57.

24) Order overruling Defendants' First Motion to Compel Election—7-3-57.

25) Order overruling Defendants' Second Motion to Compel Election—7-3-57.

26) Order overruling Defendants' Motion for Written Charge—7-8-57.

27) Order overruling Defendants' Motion for Use of Written Charge in making Objections to the Charge—7-8-57.

28) All of the Government's Requested Charges, particularly numbers 1 through 19 and the various subdivisions thereof.

29) Defendants' Requested Charges numbers 1 through 145, together with any and all subdivisions thereof, EXCEPT the following:
3, 5, 6, 7, 8, 51, 52, 53, 54, 55, 56, 57, 59 & 61.

30) Transcribed Copy of the Oral Charge of the Court.

31) Defendants' Objections to the Charge of the Court and the Government's Suggestions in connection therewith.

32) Verdict of the Jury—filed 7-17-57.

33) Motion of Defendants for Extension of Time for Filing Motions in Arrest of Judgment and Motions for New Trial—filed 7-17-57.

34) Order granting extension of time for Defendants to file Motions in Arrest of Judgment until 8-1-57, and Motion for New Trial until 8-16-57—7-17-57.

35) Order setting hearing on Defendants' Motions in Arrest of Judgment and for New Trial for Thursday, September 5, 1957 — 7-30-57.

36) Sentences of all Defendants, 7-30-57, and Judgments and Commitments evidencing same as to each Defendant — filed 7-31-57.

37) Motion in Arrest of Judgment, filed in behalf of all Defendants, 7-31-57.

38) Defendants' Motion for New Trial — filed 8-10-57.

39) Order overruling Defendants' Motion in Arrest of Judgment and Motions for New Trial — 9-5-57.

40) Notice of Appeal on behalf of all Defendants — filed 9-5-57.

41) Appearance Bond Pending Appeal, of all Defendants—filed 9-5-57.

42) Designation of Record on Appeal.

43) Reporter's Question and Answer Statement of all the Testimony and Evidence in the Case, together with all original exhibits admitted or excluded, and transcript of all other motions and proceedings not otherwise reduced to writing, including the charge of the court and all objections and suggestions made in connection therewith.

44) Reporter's transcript of all proceedings on voir dire examination of jurors, held on 3-11-57.

45) Reporter's transcript of proceedings on voir dire examination of jurors, held on 3-18-57.

46) Reporter's transcript of proceedings on voir dire examination of jurors, held on 5-6-57.

47) Reporter's transcript of evidence at the hearing on Defendants' Motion for New Trial and Defendants' Motion in Arrest of Judgment, held on 9-5-57, together with all exhibits offered and admitted, and particularly Defendants' Exhibits designated D 1 through 22, M.N.T.

48) Order Extending Time for Filing Record.

DATED this 25th day of September, 1957.

GEORGE B. PARR; D. C. CHAPA; B. F. (TOM) DONALD, JR.; JESUS G. GARZA; SANTIAGO GARCIA; OCTAVIO SAENZ; JESUS OLIVEIRA; O. P. CARRILLO; OSCAR CARRILLO, SR.; TEXAS STATE BANK OF ALICE, ALICE, TEXAS; and SAN DIEGO STATE BANK, SAN DIEGO, TEXAS,
Defendants

By LUTHER E. JONES, JR.
338 Laurel Drive
Corpus Christi, Texas;

PERCY FOREMAN
1116 Capitol
Houston, Texas;

T. GILBERT SHARPE
P. O. Box 408
Brownsville, Texas.
Attorneys for Defendants

By T. GILBERT SHARPE
T. Gilbert Sharpe.

A copy of the above and foregoing Designation of Record has been furnished to Honorable Malcolm R. Wilkey, United States Attorney for the Southern District of Texas, at Houston, Texas, by mailing the same to him on the 25th day of September, 1957.

T. GILBERT SHARPE
T. Gilbert Sharpe.

APPELLEE'S DESIGNATION OF RECORD

(Caption Omitted)

(filed, Oct. 9, 1957)

COMES NOW the Appellee, United States of America, and in addition to those matters designated by Appellant, the following matters are designated by Appellee to be included with the record to the Fifth Circuit Court of Appeals:

1. Reporter's transcript of all proceedings on hearing on Defendants' Motion to Quash and Dismiss Indictment, Motion for Bill of Particulars, Motion for Change of Venue and to Transfer Proceedings to the Corpus Christi Division and Motion to Produce and Permit Defendants to Inspect, Copy or Photograph Books, Documents, Papers and Objects held on July 24, 1956, and Government's Exhibit No. One introduced at such hearing on Defendants' Motion for Change of Venue.

2. Government's Motion for Fixing Time for filing Motion For Change of Venue, filed on December 27, 1956.

3. Order setting January 14, 1956 as date by which all Motions for Change of Venue must be filed, entered on January 7, 1957.

4. Defendants' Requested Charges Nos. 3, 5, 6, 7, 8, 51, 52, 53, 54, 55, 56, 57, 59 and 61.

5. Reporter's transcript of jury argument of all counsel on July 10, 1957 and July 11, 1957.

MALCOLM R. WILKEY
United States Attorney
By EDGAR O. BOTTLER
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Designation of Record was served on Appellants' Counsel, Percy Foreman, 1116 Capitol, Houston, Texas and T. Gilbert Sharpe, P. O. Box 408, Brownsville, Texas, by causing the same to be mailed to said Counsel this 9th day of October, 1957.

EDGAR O. BOTTLER
Edgar O. Bottler
Assistant United States Attorney

FOB:cp

6 CAPTION

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOLDING SESSIONS AT HOUSTON

UNITED STATES OF AMERICA

vs.

GEORGE B. PARR, D. C. CHAPA, B. F. (TOM) DONALD, JR., JESUS G. GARZA, SANTIAGO GARCIA, OCTAVIO SAENZ, JESUS OLIVEIRA, O. P. CARRILLO, OSCAR CARRILLO, SR., TEXAS STATE BANK OF ALICE, ALICE, TEXAS, and SAN DIEGO STATE BANK, SAN DIEGO, TEXAS,

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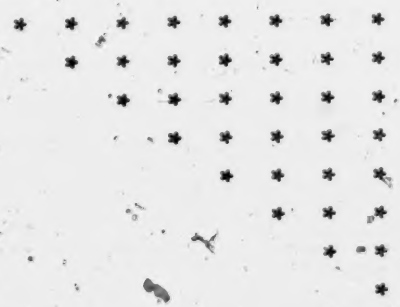
CRIMINAL NO. 12,829

BE IT REMEMBERED: That in the above entitled and numbered cause, lately pending in said Court, in which Final Judgment and Sentence was rendered as to each of the above named defendants at the regular February 1957 Term of said Court, to-wit:

On the 30th day of July, A. D. 1957, the Honorable Joe Ingraham, Judge of the United States District Court for the Southern District of Texas, presiding, the following proceedings were had, to-wit:



UNITED STATES DISTRICT COURT

Southern District of Texas — Houston Division

CR. NO. 12,829

UNITED STATES OF AMERICA

vs.

GEORGE B. PARR, D. C. CHAPA, B. F. (Tom) DONALD, JR., JESUS G. GARZA, SANTIAGO GARCIA, OCTAVIO SAENZ, JESUS OLIVEIRA, O. P. CARRILLO, OSCAR CARRILLO, SR., TEXAS STATE BANK OF ALICE, ALICE, TEXAS, and SAN DIEGO STATE BANK, SAN DIEGO, TEXAS

The Grand Jury Charges:

FIRST COUNT

1. At all times hereinafter mentioned, George B. Parr was President and Chairman of the Board of Directors of both the Texas State Bank of Alice, Alice, Texas, and the San Diego State Bank, San Diego, Texas; during some of the times hereinafter mentioned George B. Parr was County Judge of Duval County, Texas, and during some of the times hereinafter mentioned he was Sheriff of Duval County, Texas; however, at no time hereinafter mentioned did he reside within the boundaries of the Benavides Independent School District, hereinafter called BISD.

2. At all times hereinafter mentioned, D. C. Chapa resided within and was Tax Assessor and Collector of the BISD; during part of the time hereinafter mentioned, D. C. Chapa was a road inspector for Duval County, Texas. D. C. Chapa is the father of Oscar Carrillo, Sr. and O. P. Carrillo, also indicted as defendants herein.

3. At all times hereinafter mentioned B. F. (Tom) Donald, Jr. was Cashier of the Texas State Bank of Alice, Alice, Texas.

4. At all times hereinafter mentioned Jesus G. Garza resided within the BISD, during part of the time hereinafter mentioned he was a member of the Board of Trustees of the BISD. Jesus G. Garza is the father of Nita Elda Olsen.

5. At all times hereinafter mentioned, Santiago Garcia resided within the BISD, during part of the time hereinafter mentioned he was a member of the Board of Trustees of the BISD. Santiago Garcia is the father of Maria Elva Garcia, and is the son of Camilo G. Ramirez, who was a member of the Board of Trustees of the BISD during part of the time hereinafter mentioned.

6. During all of the time hereinafter mentioned Octavio Saenz resided within the BISD. During part of the time hereinafter mentioned, Octavio Saenz was President of the Board of Trustees of the BISD.

7. During all of the time hereinafter mentioned, Jesus Oliveira was a member of the Board of Directors of the Texas State Bank of Alice, Alice, Texas.

8. During part of the time hereinafter mentioned, O. P. Carrillo was attorney for the BISD.

9. During part of the time hereinafter mentioned, Oscar Carrillo, Sr. was Secretary of the BISD.

10. During all of the time hereinafter mentioned, the Texas State Bank of Alice, Alice, Texas, was a banking corporation duly organized and existing under the laws of the State of Texas, and was the duly authorized and qualified depository bank for the BISSD.

11. During all of the times hereinafter mentioned, the San Diego State Bank, San Diego, Texas, was a banking corporation duly organized and existing under the laws of the State of Texas.

12. During all times hereinafter mentioned, the BISD was a local public corporation organized and existing under the laws of the State of Texas for the purpose of administering the public schools within the District and with the power, through its Board of Trustees, to acquire and hold property, to erect school buildings and to levy taxes.

13. During all of the times hereinafter mentioned, under the laws of the State of Texas, the members of the Board of Trustees of the BISD were in control of the public free schools of such independent district and had the exclusive power to manage and govern said schools in accordance with the laws of the State of Texas.

14. Prior to the first day of September, 1949, and continuing to the twentieth day of February, 1954, the above mentioned George B. Parr, D. C. Chapa, B. F. (Tom) Donald, Jr., Jesus G. Garza, Santiago Garcia, Octavio Saenz, Jesus Oliveira, O. P. Carrillo, Oscar Carrillo, Sr., Texas State Bank of Alice, Alice, Texas, and the San Diego State Bank, San Diego, Texas, all herein indicted as defendants, devised, and intended to devise a scheme and artifice to defraud the BISD, persons obligated by the laws of the State of Texas to pay taxes to the BISD (hereinafter called taxpayers), the State of Texas, and persons obligated by the laws of the State of Texas to pay taxes to the State of Texas, and to obtain the money and property of the BISD and the taxpayers for themselves, their relatives, associates and supporters.

15. It was part of said scheme and artifice to defraud that defendants would make the following false and fraudulent pretenses and representations, well knowing that the pretenses and representations would be false when made:

(a) That BISD checks (also known as vouchers) drawn on the depository bank of the BISD, the Texas State Bank of Alice, Alice, Texas, were issued to persons and concerns for services and materials furnished to the BISD.

(b) That funds of the BISD were disbursed to persons and concerns for services and materials furnished to the BISD.

(c) That the Annual Report of School Funds of the BISD, showing the financial affairs of the BISD as required by Article 301 of the Texas Penal Code, contained a true and correct statement of the receipts and disbursements of the school funds of the BISD.

16. It was further a part of said scheme and artifice to defraud and to obtain money and property by false pretenses and representations that the defendants would

(a) establish and maintain domination and control of the BISD by the defendants George B. Parr, D. C. Chapa, Oscar Carrillo, Sr., O. P. Carrillo, Octavio Saenz, Jesus G. Garza and Santiago Garcia,

(b) establish and maintain control of the Texas State Bank of Alice, Alice, Texas, by George B. Parr, President, Director and Chairman of the Board of such bank, B. F. (Tom) Donald, Jr., the Cashier of such bank, and Jesus Oliveira, a director of such bank,

(c) establish and maintain control of the San Diego State Bank, San Diego, Texas, by its President, Director and Chairman of the Board of Directors, George B. Parr,

(d) mail through the United States Mails tax statements, tax receipts and correspondence concerning taxes to taxpayers of the BISD and the receipt through the United States Mails of tax renditions, correspondence concerning taxes and checks in payment of taxes from taxpayers of the BISD,

(e) obtain money from taxpayers of the BISD and from the State Available Fund of the Treasury of the State of Texas each and every year during the operation of the fraud,

(f) deposit money so received in the Texas State Bank of Alice, Alice, Texas, the authorized depository bank of the BISD,

(g) issue BISD checks drawn on the depository bank and payable to fictitious persons and concerns,

(h) issue BISD checks drawn on the depository bank and payable to persons and concerns neither employed by the BISD nor rendering anything of value to the BISD,

(i) falsify checks and records showing that such checks were issued to persons and concerns for services rendered, for labor and materials furnished, for supplies furnished, for equipment furnished, whereas in truth and in fact, no such services were rendered, no such labor or materials were furnished, and no such supplies or equipment were furnished for said checks,

(j) forge endorsements on such fraudulent checks where necessary,

(k) cash such checks which would be honored by the depository bank and would be charged by the bank against the account of the BISD on forged endorements, on genuine endorsements of those persons who were issued fraudulent checks and who were intended by the defendants to receive fruits of the fraud, and in many instances without endorsement,

(l) cash such fraudulent checks at City Utilities of Benavides, Texas,

(m) open accounts in banks other than the authorized depository bank,

(n) deposit tax funds of the BISD in unauthorized bank accounts which would be withdrawn by the defendant D. C. Chapa,

(o) obtain equipment, material and supplies for the personal use of defendants and the use of their associates and supporters, and the payment for same with BISD funds; and would conceal such misuse of the BISD funds by falsifying BISD records and the Annual Reports of School Funds of the BISD,

(p) cash taxpayers' checks payable to the BISD, and would obtain and convert the proceeds of such checks to their own use and would fraudulently issue tax receipts purporting to show the receipt of such funds by the BISD,

(q) prepare the Annual Reports of School Funds showing the financial affairs of the BISD for the fiscal years commencing September 1, 1949 and ending August 31, 1950; commencing September 1, 1950 and ending August 31, 1951; commencing September 1, 1951 and ending August 31, 1952; commencing September 1, 1952 and

ending August 31, 1953, said reports being required by Article 301 of the Texas Penal Code, and would show the approval of the annual statement of school funds in such reports by the Board of Trustees of the BISD,

(r) use the United States Mails in transmitting the Annual Reports (referred to in (q) above) to the State Commissioner of Education, Austin, Texas, for filing with the Texas Education Agency (Central Education Agency),

(s) make the pretense and representations in such Annual Reports that the above described fraudulent checks were issued for services rendered, for labor and materials furnished, for equipment furnished, for supplies furnished, whereas in truth and in fact, no such services were rendered and no such labor and materials were furnished and no such equipment or supplies were furnished for such checks,

(t) make pretense and representations in such Annual Reports that such Annual Reports correctly showed the receipts and disbursements of the school funds of the BISD whereas, in fact, such reports failed to account for and show the receipt and disbursement of the funds deposited in banks other than the authorized depository bank, and failed to show the receipt of taxpayers' checks which were cashed and the proceeds thereof obtained by the defendants,

(u) conceal the fraudulent misuse of BISD funds by the submission of the above described Annual Reports containing the above described false pretenses and representations to the State Commissioner of Education and the Texas Education Agency (Central Education Agency), the submission of such reports serving to lull the defrauded parties.

(v) cover up the aforesaid acts of the defendants by concealing or destroying cancelled checks, bank statements and other records of the BISD,

(w) cover up the aforesaid acts of the defendants by concealing, spiriting away or destroying the microfilmed bank records of the defendants Texas State Bank of Alice, Alice, Texas, and the San Diego State Bank, San Diego, Texas, said records containing, among other documents pertaining to the financial transactions of these defendants, true and correct microfilm copies of all of the above described fraudulent checks drawn on accounts at said banks, showing the makers' signatures, countersignatures and endorsements thereon, and all checks deposited to the BISD accounts at such banks.

17. On or about the 29th day of September, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be taken from a Post Office a letter addressed to Humble Oil and Refining Company, Houston, Texas, Att'n: Mr. J. A. Mowlam. (Vio. Sec. 1341, Title 18, U. S. Code)

SECOND COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about the 21st day of July, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this court, the defendants, for the purpose of executing the aforesaid scheme and artifice, and

attempting to do so, caused to be taken from a Post Office, a letter addressed to the Humble Oil & Refining Co. Houston, Texas, attention: Mr. H. L. Stone, Tax Commissioner. (Vio. Sec. 1341, Title 18, U. S. Code)

THIRD COUNT

The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 29, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Mr. D. C. Chapa, Tax Collector, Benavides Ind. Sch. Dist., Benavides, Texas, with an enclosure of Humble Oil & Refining Company check Number E59033 dated September 26, 1952, payable to the order of Tax Coll Benavides Ind Sch Dist and in the amount of $43,166.07, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

FOURTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about the 23rd day of September, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice,

and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Mr. Diego Heras, Tax Collector Benavides Ind. Sch. Dist., Benavides, Texas, with an enclosure of Humble Oil & Refining Company check Number F 20395, dated September 24th, 1953, payable to the order of Tax Coll Benavides Ind Sch Dist and in the amount of $53,807.39, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

FIFTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about May 27, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be taken from a Post Office a letter addressed to the Humble Oil and Refining Co., Houston Texas, att'n Mr. H. L. Stone, Tax Commissioner. (Vio. Sec. 1341, Title 18, U. S. Code)

SIXTH COUNT

1. The Grand Jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 28, 1951, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized

depository for mail matter, a letter addressed to Mr. Diego Heras, Tax Collector, Benavides Ind. Sch. Dist, Benavides, Texas with an enclosure of Humble Oil & Refining Company check Number F 50730, dated Sept. 25, 1951, payable to the order of Tax Collector Benavides Ind. Sch. Dist and in the amount of $34,285.09, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

SEVENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment, except those contained in the last paragraph thereof.

2. On or about December 4, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be taken from a Post Office, a letter addressed to C. W. Hahl Company, San Jacinto Building, Houston, Texas, att'n Mr. Dan Shepler, (Vio. Sec. 1341, Title 18, U. S. Code)

EIGHTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 28, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository

for mail matter, a letter addressed to Mr. D. C. Chapa, Tax Collector Benavides Ind School District, Benavides, Texas with an enclosure of C. W. Hahl Properties Check Number 75, dated September 25, 1953, payable to order of Tax Collector, Benavides Independent School District and in the amount of $544.21, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

NINTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 21, 1951, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matters, a letter addressed to Tax Assessor and Collector, Benavides Independent School District, Benavides, Texas, with an enclosure of check Number 9997 of the C. W. Hahl Company, dated September 21, 1951, in the sum of $555.25, payable to Tax Assessor & Collector Benavides Independent School Dist., to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

TENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 27, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Tax Collector, Benavides Independent School District, Benavides, Texas with an enclosure of a check Number 10186 of the C. W. Hahl Company dated September 26, 1952 in the sum of $451.70 and payable to Tax Collector Benavides Independent School District, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

ELEVENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 28, 1951, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Tax-Assessor-Collector Benavides Ind. School Dist., Benavides, Texas, with an enclosure of Check No. H 2865 of The Texas Company, dated September 27, 1951, in the sum of $13,532.64 payable to Tax Assessor-Collector Benavides Ind. School Dist., Benavides, Texas, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

TWELFTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 26, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Tax Assessor-Collector, Benavides Ind. School Dist., Benavides, Texas with an enclosure of check No. H 6467 of The Texas Company, dated September 26, 1952, in the sum of $13,-078.72 and payable to the Tax Assessor-Collector, Benavides Ind. School Dist., Benavides, Texas to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

THIRTEENTH COUNT

1. The grand Jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 30, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Tax Assessor-Collector, Benavides Ind. Sch. Dist. Benavides, Texas with an enclosure of Check No. H 8255 of the Texas Company dated September 30, 1953, in the sum of $14,-

665.04 and payable to the Tax Assessor-Collector Benavides Independent School District, Benavides, Texas to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

FOURTEENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 30, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Tax Assessor-Collector Benavides Ind. School Dist., Benavides, Texas with an enclosure of Check No. 46594 of The Texas Pipe Line Company, dated Sept. 30, 1953 in the sum of $330.84 and payable to the Tax Assessor-Collector, Benavides Independent School District, Benavides, Texas to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

FIFTEENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 30, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and

attempting to do so, caused to be placed in an authorized depository for mail matters, a letter addressed to Benavides Independent School Dist., Benavides, Texas with an enclosure of check No. 1798 of J. E. Beall dated September 30, 1953, in the sum of $415.72, and payable to the Benavides Indep. School Dist. to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

SIXTEENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about October 24, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Benavides Independent School Dist., Benavides, Texas, with an enclosure of Check No. 1536 of J. E. Beall dated October 24, 1952, in the sum of $355.55, and payable to the Benavides Indep. School Dist. to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

SEVENTEENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about June 1, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Benavides Ind. Sch. Dist. c/o Oscar Carrillo, Benavides, Texas, with enclosure of Statement of Continental Oil Company in account with the BISD dated May 25, 1953 and supporting invoices of A. Caballero, Jr., a dealer of Continental Oil Company, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

EIGHTEENTH COUNT

1. The grand Jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about April 8, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be taken from a Post Office, a letter addressed to Continental Oil Company, P. O. Box 2197, Houston, Texas with an enclosure of Check No. 32552 of the Benavides Independent School District, Benavides Local Maintenance Fund, dated March 31, 1953 in the sum of $353.02 and payable to Continental Oil Co. (Vio. Sec. 1341, Title 18, U. S. Code)

NINETEENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about April 1, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Benavides Ind. School Dist c/o Oscar Carrillo, Benavides, Texas, with an enclosure of Statement of Continental Oil Company in account with the BISD dated March 20, 1953 and supporting invoices of A. Caballero, a dealer of Continental Oil Company, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code)

TWENTIETH COUNT

That commencing on or about September 1, 1949 and continuing thereafter until on or about February 20, 1954, George B. Parr, D. C. Chapa, B. F. (Tom) Donald, Jr., Jesus G. Garza, Santiago Garcia, Octavio Saenz, Jesus Oliveira, O. P. Carrillo, Oscar Carrillo, Sr., the Texas State Bank of Alice, Alice, Texas, and the San Diego State Bank, San Diego, Texas, conspirators and named defendants herein, and Jewel Mayfield and Diego Heras, named as co-conspirators but not indicted herein, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, did unlawfully, knowingly and feloniously combine, conspire, confederate, agree together, one with the other and with persons to the Grand Jurors unknown, to commit the offenses against the laws of the United States which are fully described and set out in the first count of this indictment, that pursuant to said conspiracy and to effect the objects of said conspiracy, they did the following acts:

OVERT ACTS

1. Each of the Overt Acts alleged in the preceding nineteen counts of this indictment, in the respective dates and places alleged therein.

2. On or about October 4, 1951, the above conspirators caused Tax Receipts A 2663, A 2664, A 2665, A 2666, A 2667, A 2668 and A 2669 of the BISD to be delivered by the United States Mails to the Humble Oil and Refining Company at Houston, Texas.

3. On or about October 11, 1951, the above conspirators caused Tax Receipts A 2717, A 2718, A 2719, A 2720, A 2721 of the BISD to be delivered by the United States Mails to the Texas Company at Houston, Texas.

4. On or about October 7, 1952, the above conspirators caused Tax Receipt 204 of the BISD to be delivered by the United States Mails to the Texas Pipeline Company at Houston, Texas.

5. On or about October 15, 1953, the above conspirators caused Tax Receipts A 472, A 473, A 474 and A 475 of the BISD to be delivered by the United States Mails to the Texas Company at Houston, Texas.

6. On or about September 30, 1952, the above conspirators caused to be deposited in an authorized depository for mail in Houston, Texas, a letter addressed to the Tax Assessor-Collector Benavides Ind. School Dist., Benavides, Texas, with an enclosure of Check No. 22714 of the Texas Pipeline Company, dated Sept. 29, 1952, payable to Tax Assessor-Collector Benavides Ind. Sch. Dist., Benavides, Texas, and in the amount of $325.07.

7. On or about November 12, 1952, Octavio Saenz, J. G. Garza and D. C. Chapa met at a special meeting of the Board of Trustees of the BISD held at Benavides, Texas.

8. On or about January 13, 1953, Octavio Saenz, J. G. Garza, Santiago Garcia and D. C. Chapa met at a special meeting of the Board of Trustees of the BISD held at Benavides, Texas.

9. On or about November 8, 1952, at Benavides, Texas, D. C. Chapa gave one Ramiro Morin Check No. 1536 of J. E. Beal dated Oct. 24, 1952, in the amount of $355.55 and payable to the BISD and instructed him to cash the check at the Merchants Exchange Bank, Benavides, Texas.

10. On or about November 15, 1952, at Benavides, Texas, D. C. Chapa gave Ramiro Morin Check No. 36414 of the Barbara Oil Co. dated Oct. 23, 1952 in the sum of $361.00 and instructed him to cash the check at the Merchants Exchange Bank, Benavides, Texas.

11. On or about November 22, 1952, at Benavides, Texas, D. C. Chapa gave Ramiro Morin the following checks: Check No. 29843 of O. W. Greene dated Sept. 23, 195[illegible] in the sum of $298.43; unnumbered check of Peal Properties, Laredo, Texas, dated October 29, 1952 in the sum of $230.92, and check No. 715 of Allen Martin, dated October 28, 1952 in the sum of $300.82, and instructed him to cash the checks at the Merchants Exchange Bank Benavides, Texas.

12. On or about October 17, 1952 at the Merchants Exchange Bank, Benavides, Texas, D. C. Chapa cashed

Check No. 66054 of the Jones-Laughlin Supply, dated September 26, 1952 and in the sum of $320.15.

That the acts aforesaid were and are in violation of Section 371, Title 18, United States Code.

T. J. HUSAN
Foreman of the Grand Jury

EDGAR O. BOTTLER
Assistant United States Attorney
EOB:sp

23 MOTIONS TO QUASH AND DISMISS INDICTMENT, FOR BILL OF PARTICULARS, FOR CHANGE OF VENUE, TO PRODUCE AND PERMIT INSPECTING CERTAIN DOCUMENTS

(Caption Omitted)

(filed, June 15, 1956)

TO SAID HONORABLE COURT:

Now come George B. Parr, D. C. Chapa, B. F. (Tom) Donald, Jr., Jesus G. Garza, Santiago Garcia, Octavio Saenz, Jesus Oliveira, O. P. Carrillo, Oscar Carrillo, Sr., Texas State Bank of Alice, Alice, Texas, and San Diego State Bank, San Diego, Texas, Defendants in the above entitled and numbered cause, and file this their Motion to Dismiss the Indictment, and for appropriate relief, including:

1) Motion to Quash and Dismiss the Indictment (pages 2 to 8);

2) Motion for Bill of Particulars (pages 9 to 60b);

3) Motion for Change of Venue and to Transfer Proceeding to the Corpus Christi Division of the United States District Court for the Southern District of Texas
(pages 61 to 65); and

4) Motion to Produce and Permit Defendants to Inspect, Copy or Photograph Documents, Books, Papers and Objects;
(pages 66 to 74);

and respectfully move and allege as follows:

I.

The Defendants move that the Indictment herein be dismissed and quashed on the following grounds:

A. The Court is without jurisdiction herein, and in any event venue is improperly placed in the Houston Division of the United States District Court for the Southern District of Texas, and the offense, if any, is properly cognizable only in the Corpus Christi Division of the United States District Court for the Southern District of Texas.

B. The Indictment, and each Count thereof, is uncertain, vague, indefinite and illogical, and does not with sufficient particularity and accuracy set out an offense against the laws of the United States.

C. The scheme or artifice to defraud alleged therein, and particularly in Count 1 of the Indictment (which is adopted by reference in Counts 2 through 19 of the Indictment, and which is the basis for the offense or offenses which are involved in the conspiracy set out in

Count 20 of the Indictment), alleged to have been devised by the Defendants, is not set forth with sufficient particularity and accuracy as to inform the Defendants of the fraud and offense charged against them. In particular, the Indictment and Count 1 thereof, which attempts to allege a scheme to defraud, does not anywhere allege or set out what the entire or general scheme was or what it consisted of. Defendants say that the Indictments shows on its face that only in Count 1, Paragraphs 14, 15 and 16, is there any attempt to allege a scheme to defaud; that Paragraph 14 fails to allege or state any essential or ultimate facts concerning a scheme to defraud; and that Paragraph 15 shows on its face that only part of an alleged scheme to defraud is alleged or set out, and further that said Paragraph 15 does not in its first paragraph or in its three subdivisions designated as (a), (b) and (c), set out any ultimate facts or reasons why the purported representations or pretenses were false or fraudulent; that Paragraph 16 shows on its face that only part of an alleged scheme to defraud and to obtain money and property by false representations, is alleged or set out; that Subdivisions (a), (b), (c), (d), (e), (f), (m), (q), (r) of said Paragraph 16 of Count 1 of the Indictment, do not attempt to set out any ultimate facts or reasons why the purported conduct, representations or pretenses were false or fraudulent; that the remaining Subdivisions, that is, (g), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (u), (v), (w) of said Paragraph 16 of Count 1 of the Indictment, do not sufficiently set out any ultimate facts or reasons why the purported representations or pretenses were false and fraudulent; that the Indictment, therefore, does not contain a plain, concise and definite written statement of the essential facts constituting the offense attempted to be

charged, and is so vague, indefinite, uncertain and lacking in particularity that the same should be quashed and dismissed.

D. Count 1 of the Indictment, upon which the succeeding Counts 2 through 19 are based, and which allegedly sets out the offense or offenses involved in the conspiracy alleged in Count 20 of the Indictment; is duplicitous, and charges and involves more than one offense against the laws of the United States for the following reasons:

(1) At least two schemes or artifices are alleged to have been devised by the Defendants; one such scheme is "to defraud (the named persons, etc.); and the second scheme is to "obtain the money and property of the BISD and the taxpayers for themselves, their relatives, associates and supporters;"

for which reasons the Indictment and each Count thereof should be quashed and dismissed.

E. Either Count 1 of the Indictment is duplicitous and involves more than one offense against the laws of the United States; or there is such a material conflict and repugnancy between said Count 1 and Count 20 of the Indictment that either or both of them cannot be held to sufficiently charge an offense. Count 20 alleges in substance that the Defendants conspired "to commit the offense against the laws of United States which are fully described and set out in the First Count of the Indictment".

Defendants say that Count 1 is duplicitous and should be dismissed and quashed; that in any event the allegations of Count 1 and Count 20 of the Indictment are so con-

tradictory and repugnant that they are mutually destructive of each other; that Counts 2 through 19 being dependent upon the allegations of Count 1, should be dismissed and quashed along with Counts 1 and 20 of the Indictment.

F. Count 1 of the Indictment is so vague, indefinite and uncertain and lacks particularity and accuracy to the extent that it fails to set out an offense because

(1) only in Paragraphs 14, 15 and 16 is there any attempt to set out a scheme and artifice to defraud and to obtain the money and property of the BISD and the taxpayers for the Defendants, their relatives, associates and supporters. In Paragraph 14 there is no allegation whatsoever that the defendants would make any false and fraudulent pretenses and representations in connection with such scheme or schemes. In Paragraph 15 and its Subdivisions (a), (b) and (c) the alleged false and fraudulent pretenses and representations are related only to "said scheme and artifice to defraud" and the same are not related to or referable to a scheme "'to obtain the money and property of the BISD and the taxpayers for etc." Paragraph 16 and its Subdivisions (a) through (w) do not allege that the Defendants would "make" false and fraudulent representations as a part of the alleged scheme and artifice as does said Paragraph 15, but, instead, attempts to set out conduct and acts that the Defendants "would" engage in. There is no direct or sufficient allegation in the said Paragraphs 14, 15 and 16 and their subdivisions, that the scheme for obtaining money and property was "by means of false or fraudulent pretenses, repre-

sentations or promises", as is required by law and particularly by Sec. 1341, Title 18, United States Code. Furthermore, the allegations of Paragraph 14 of Count 1 limit the scheme insofar as it relates to the obtaining of money or property to "the BISD and the taxpayers", whereas Paragraph 16 does not contain any such limitation. Each of such allegations, standing alone, is not sufficient to state an offense and if considered together they are so conflicting, repugnant, vague and uncertain that the Indictment does not contain a plain, concise and definite statement of the essential facts constituting the offense. Such deficiencies are not elsewhere supplied in the Indictment. Counts 2 through 20 of the Indictment are so framed that they each are dependent upon the allegations of Count 1, and therefore the entire Indictment and each Count thereof should be quashed and dismissed.

G. Count 1 of the Indictment does not state an offense against any law or laws of the United States, and particularly does not state an offense under Sec. 1341 of Title 18, United States Code, because it is alleged in substance in Paragraph 17 thereof that Defendants "for the purpose of executing the aforesaid scheme and artifice and attempting to do so caused to be taken from a post office a letter, addressed to Humble Oil & Refining Company, Houston, Texas, Att'n: Mr. J. A. Mourlam" and such allegation is insufficient in that the essential element of use of the United States mails is not properly alleged. The said Sec. 1341 of Title 18, United States Code, defines an offense and provides punishment for whoever (1) "places in any post office or authorized depository for mail matter any matter of thing whatever to be sent or delivered by the Post Office Department"; (2) "takes or receives there-

from any such matter or thing"; or (3) "knowingly causes to be delivered by mail according to the direction thereon or at the place at which it is directed to be delivered by the person to whom it is addressed, any such thing, etc."; for the purpose of executing such scheme or artifice. The Indictment herein does not contain any allegation which would bring it within the provisions of said law, or any other law of the United States, and in particular it is not alleged that the letter, matter or thing so allegedly caused to be taken from a post office was "to be sent or delivered by the Post Office Department" as is required by said statute. Count 1 being deficient in such respect, should be quashed and dismissed.

H. Counts 2, 5, 7, and 18 of the Indictment each fail to state an offense against any law or laws of the United States, for the reasons given in Paragraph G immediately hereinabove set out, and such Counts should each be quashed and dismissed.

I. Count 20 of the Indictment is so vague, indefinite and uncertain, and is so lacking in particularity and accuracy, that it fails to set out an offense because

(1) The offense or offenses which the Defendants allegedly conspired to commit against the laws of the United States are not identified sufficiently to enable the Defendants to ascertain the charge or charges against them.

(2) From the language of said Count, Defendants cannot ascertain whether they are charged with having conspired to commit only one offense or more than one offense against the laws of the United States. The allegation, in substance, that Defendants conspired "to

commit the offense against the laws of the United States, which are fully described and set out in the First Count of this Indictment" is vague and uncertain because

(a) If the First Count of the Indictment alleges more than one offense or involves more than one law of the United States, it is duplicitous and should be quashed and dismissed.

(b) If the First Count of the Indictment alleges but one offense against one law of the United States, it is improperly referred to, described and adopted by the allegations of Count 20 of the Indictment.

(c) The allegations of Count 1 and Count 20 are so conflicting, repugnant, vague and uncertain that they are so mutually destructive that either or both of them do not and cannot be held to state an offense against the laws of the United States.

(3) The alleged overt acts contained in Paragraphs 1 through 12 of said Count 20 do not allege any ultimate facts showing acts of the Defendants occurring within the Houston Division of the United States District Court for the Southern District of Texas.

For all of such reasons, Count 20 of the Indictment should be quashed and dismissed.

J. Defendants respectfully show that they have filed herein a Motion for Bill of Particulars in connection with the said Indictment. In the event said motion shall be granted in whole or in part, Defendants say that there will be additional grounds which may be added to

this motion to dismiss; and Defendants reserve the right to amend in such respect.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that this motion to dismiss be granted, that the Defendants be discharged, and for such other and further appropriate relief as may be proper in the premises.

LUTHER E. JONES, JR.
Luther E. Jones, Jr.
338 Laurel Drive
Corpus Christi, Texas

PERCY FOREMAN
Percy Foreman
1116 Capital
Houston, Texas

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Brownsville, Texas
Attorneys for Defendants

II.

The Defendants, and each of them, subject to all rights under motions, objections and exceptions filed and taken herein, move the Court for an order requiring the United States of America and the United States Attorney to file and furnish to the Defendants a Bill of Particulars as to the following matters and items. The same is necessary because the language used in the Indictment is such that the Defendants are not informed or fairly apprised with sufficient particularity of the charges made against them, which they will have to defend; the language used is so general,

vague, uncertain, and is such that the Defendants are liable to be surprised at the trial by the introduction of evidence for which they are and will be unprepared; the charges made are so general that they do not advise Defendants of the ultimate facts or specific acts with which they are charged; such information is necessary to enable Defendants to intelligently prepare for trial, to secure essential facts, not legal theories; to clearly delineate the issues, avoid unfair surprise, and to safeguard against further prosecutions for the same acts; and for the further reasons hereinafter set out in this paragraph.

A. State whether the Government claims, or will contend on the trial of this case, that any of the Defendants are principals, or punishable as principals, under Sec. 2 of Title 18, United States Code.

1. State the names of or identify the Defendants whom the Government claims or will contend are principals or punishable as principals under said Sec. 2, Title 18, United States Code.

2. As to each Defendant in the said category of principal, state the ultimate facts as to his aiding, abetting, counseling, commanding, inducing or procuring the commission of the offense involved herein, and particularly as to the acts and matters contained in each Count and subdivision thereof.

3. State further as to each Defendant in the said category of principal, the ultimate facts as to his causing an act to be done which, if directly performed by him or another, would have been an offense against the United States; and particularly as to the acts and matters

contained in each Count of the Indictment, and each subdivision thereof.

B. Concerning Count One, Paragraph 14, of the Indictment:

1. The approximate date or dates when the Government will claim that the alleged scheme to defraud was initially devised by the Defendants.

2. The place or places where the alleged scheme to defraud was devised.

   a. Whether the alleged scheme was devised within the Houston Division of this Court, or some other Division of said Court.

   b. If the said scheme was devised in some other Division of the United States District Court for the Southern District of Texas, specify or name it.

   c. Where each of the Defendants was located at the time the alleged scheme was devised.

3. Whether all of the Defendants became original parties to the alleged scheme to defraud, or whether some of them joined it at a later date; and if all did not initially join, state:

   a. The names of the Defendants who originally participated in devising the scheme.

   b. The names of those Defendants who later joined in the scheme, if any, and the date upon which each of them entered the said scheme.

4. The name or names of the agent, agents, employees or representatives of the two defendant banks who are corporations, who allegedly acted for or on behalf of such corporations in connection with the alleged scheme to defraud.

5. State the ultimate facts as to the entire scheme or artifice to defraud and what it consisted of, and particularly as to

a. BISD.

b. Persons obligated by the laws of the State of Texas to pay taxes to the BISD, called "taxpayers".

c. The State of Texas.

d. Persons obligated by the laws of the State of Texas to pay taxes to the State of Texas.

6. State the names of the relatives of the Defendants, allegedly involved, who were to receive the benefit of the money and property of the BISD and the taxpayers, obtained by the Defendants.

7. State the names of the associates of the Defendants, allegedly involved, who were to receive the benefit of the money and property of the BISD and the taxpayers, obtained by the Defendants.

8. State the names of the supporters of the Defendants, allegedly involved, who were to receive the benefit of the money and property of the BISD and the taxpayers, obtained by the Defendants.

9. State the ultimate facts as to the manner and means by which the money and property of the BISD was to be obtained by the Defendants.

10. State the ultimate facts as to each Defendant, with reference to the formulation of the alleged scheme to defraud.

11. State the ultimate facts as to each Defendant, in connection with the alleged scheme to defraud, occurring or taking place within the Houston Division of the Southern District of Texas, if any.

12. State the ultimate facts relied on by the Government in connection with the allegation that the Defendants intended to devise a scheme to defraud; and particularly the ultimate facts showing such intention on the part of each Defendant.

C. Concerning Count 1, Paragraph 15, of the Indictment:

1. Specify or name the person or persons intended to be defrauded under the allegations of said paragraph.

2. State why or in what respects the alleged representations were false or fraudulent.

3. State as to each Defendant whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed or the representations or pretenses made

or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

D. Concerning Count 1, Paragraph 15(a), of the Indictment:

1. Specify or name the persons to whom the alleged representations were made in connection with the BISD checks involved in this sub-section.

2. Specify or name the persons or concerns to whom BISD checks or vouchers were issued, or intended to be issued for services and materials furnished to the BISD.

3. Specify wherein the issuance of BISD checks to persons and concerns for services and materials furnished to the BISD were false or fraudulent.

4. Identify the checks or vouchers involved in this paragraph, including the date, amount, by whom drawn or signed, and to whom payable.

5. Specify what funds or accounts of the BISD were involved in connection with the BISD checks or vouchers mentioned in this paragraph.

6. Specify the alleged services or materials furnished to the BISD, involved in this paragraph.

7. State as to each Defendant whether he directly engaged in the conduct charged, or performed the acts or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to

each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

E. Concerning Count 1, Paragraph 15 (b), of the Indictment:

1. Identify the funds of the BISD which were disbursed or intended to be disbursed under the allegations of this paragraph.

2. Specify the manner in which such funds were disbursed, whether by cash, check or voucher; and in either case, give the date and amount of the disbursement, and state by whom and to whom the said funds were disbursed.

3. Give the names of the persons or concerns to whom funds were disbursed, or intended to be disbursed, for services and materials.

4. Specify what alleged services and materials were involved under this paragraph.

5. State the ultimate facts as to each Defendant, in connection with each of the above allegations of this paragraph.

6. State wherein the pretenses and representations involved in this paragraph were false and fraudulent.

7. State as to each Defendant whether he directly engaged in the conduct charged, or performed

the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

F. Concerning Count 1, Paragraph 15(c), of the Indictment:

1. Specify the year or years in which annual reports of school funds of BISD are involved.

2. State the ultimate facts as to what was or is required by Article 301 of the Texas Penal Code, with reference to an annual report of school funds of the BISD.

3. Identify and specify the particular items or entries contained in said annual report of school funds of the BISD, which were not true and correct.

4. Identify the particular accounts or funds involved within the general description of "the school funds of the BISD".

5. State the name of the person who prepared the annual reports involved.

6. State the names of the persons who were defrauded, or intended to be defrauded, by the annual report of school funds of the BISD.

7. Give the ultimate facts as to the participation of each Defendant in the preparation of the said annual report of school funds of the BISD.

8. State wherein the pretenses or representations involved in this paragraph were false and fraudulent.

9. State as to each Defendant whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses, involved in this paragraph, or intended to or would do so; and as to each defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

G. Concerning Count 1, Paragraph 16, of the Indictment:

1. State the substance of any false representations, or describe any false pretenses, involved in a scheme to defraud and to obtain money and property.

2. State wherein the pretenses or representations involved in this paragraph were false and fraudulent.

3. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved

in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

H. Concerning Count 1, Paragraph 16(a), of the Indictment:

1. Give the ultimate facts which will be relied on by the Government to establish that the Defendants would or did maintain, or intended to maintain, domination and control of the BISD.

2. Give the ultimate facts as to each Defendant's connection with such domination or control.

3. State the ultimate facts as to the relationship between the allegations of this paragraph and the alleged scheme to defraud.

4. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Section 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, in-

duced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

I. Concerning Count 1, Paragraph 16(b), of the Indictment:

1. Give the ultimate facts as to how the Defendants would or did establish and maintain control of the Texas State Bank of Alice, Alice, Texas.

2. Give the ultimate facts as to each Defendant's connection with such alleged control of the Texas State Bank.

3. State the ultimate facts as to the relationship between the allegations of this paragraph and the alleged scheme to defraud.

4. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

J. Concerning Count 1, Paragraph 16(c), of the Indictment:

1. Give the ultimate facts as to how the Defendants would or did establish and maintain control of the San Diego State Bank, of San Diego, Texas.

2. Give the ultimate facts as to each Defendant's connection with such alleged control of the San Diego State Bank.

3. State the ultimate facts as to the relationship between the allegations of this paragraph and the alleged scheme to defraud.

4. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

K. Concerning Count 1, Paragraph 16(d), of the Indictment:

1. State the ultimate facts as to how the allegations of this paragraph are related to the scheme to defraud, or to obtain money and property.

2. Give the name or names of the Defendants or other persons who personally participated in mailing the various alleged matters described in said paragraph.

3. State or describe any act or acts which were engaged in under the allegations of this paragraph, which would not have been engaged in but for a scheme or artifice to defraud.

4. Give the ultimate facts as to the use of the United States mail in connection with the allegations of this paragraph; particularly identify the items involved and the place or places any letters were deposited, taken, or delivered.

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing, taking, or delivering of the matters described in said paragraph.

6. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

L. Concerning Count 1, Paragraph 16(e), of the Indictment:

1. State the ultimate facts showing how the allegations of this paragraph are related to the scheme or artifice to defraud.

2. State the manner or means of obtaining money from the taxpayers of the BISD.

3. State the manner or means of obtaining money from the State Available Fund.

4. Designate the year or years involved in connection with the allegations of this paragraph.

5. Give the ultimate facts as to the participation of each Defendant, in each year during which it is claimed that money was obtained from the taxpayers of the BISD or from the State Available Fund.

6. State why the obtaining of money from taxpayers of the BISD or the State Available Fund was false or fraudulent; and give the ultimate facts as to each Defendant in such connection.

7. State the name or names of the person or persons who obtained money from the sources described in said paragraph, and also give the dates upon which the said money was obtained, and the amounts thereof.

8. Give the amount of any moneys received from the State Available Fund, and also give the dates upon which the same were received.

9. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, pro-

cured or caused the conduct charged, the acts performed, or the representaions or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

M. Concerning Count 1, Paragraph 16(f), of the Indictment:

1. Give the name of the person who deposited money so received, in the Texas State Bank of Alice, Alice, Texas.

2. State the amount of money and the date upon which the same was deposited in said bank.

3. Give the ultimate facts as to participation of each Defendant in the acts alleged in this paragraph.

4. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

N. Concerning Count 1, Paragraph 16(g), of the Indictment:

1. Identify the checks involved in this paragraph, as to date, amount, and by whom signed.

2. Give the names used in connection with each check which was allegedly payable to a fictitious person or concern.

3. Give the ultimate facts as to each Defendant's participation in the acts alleged in this paragraph.

4. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

O. Concerning Count 1, Paragraph 16(h), of the Indictment:

1. Identify the checks involved in this paragraph, as to date, amount, and by whom signed.

2. Give the name of the payee of each check which was allegedly payable to a person or concern neither employed by BISD nor rendering anything of value to BISD.

3. Give the ultimate facts as to each Defendant's participation in the acts alleged in this paragraph.

4. State as to each Defendant, whether he directly engaged in the conduct charged; or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

P. Concerning Count 1, Paragraph 16(i), of the Indictment:

1. Give the name or names of the person or persons who falsified checks and records involved under this paragraph.

2. Identify the checks involved, particularly as to date, amount, to whom payable, and by whom signed.

3. Identify the records involved; and as to all such records, checks and documents involved under the paragraph, state why the same were false and how the same were falsified.

4. State the name or names of the person or persons to whom the checks involved under this paragraph were delivered.

5. Describe the services which were allegedly or purportedly rendered or to be rendered under the allegations of this paragraph.

6. Describe the labor and materials allegedly or purportedly furnished under the allegations of this paragraph.

7. Describe the supplies and equipment allegedly or purportedly furnished under the allegations of this paragraph.

8. Give the ultimate facts as to the participation of each Defendant in the acts alleged in this paragraph.

9. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

Q. Concerning Count 1, Paragraph 16(j), of the Indictment:

1. Give the name or names of the person or persons who forged endorsements on fraudulent checks.

2. Identify the checks involved, as to date, amount and to whom payable.

3. Give the ultimate facts as to the participation of each Defendant in the acts alleged in this paragraph.

4. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

R. Concerning Count 1, Parapraph 16(k), of the Indictment:

1. Identify the checks involved in this paragraph, as to date, amount and to whom payable.

2. Identify the checks which are alleged to involve forged endorsements; and identify separately those checks which were fraudulent, on which genuine endorsements appeared.

3. Identify the checks involved, which were cashed without endorsement, as to date, amount, and to whom payable.

4. Give the name or names of the person or persons who received or paid cash in connection with the checks involved in this paragraph.

5. Give the ultimate facts as to the participation of each Defendant in the acts alleged in this paragraph.

6. State why the checks involved in this paragraph were fraudulent.

7. State the names of the persons who were intended by the Defendants to receive the fruits of the alleged fraud.

8. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

S. Concerning Count 1, Paragraph 16(l), of the Indictment:

1. Identify the checks involved in this paragraph, as to date, amount, by whom signed, and to whom payable.

2. Give the name or names of the person or persons at the City Utilities of Benavides, Texas, who participated in the cashing of such checks.

3. State why the particular checks involved under this paragraph were fraudulent.

4. Give the ultimate facts as to the participation of each Defendant in the acts alleged in this paragraph.

5. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

T. Concerning Count 1, Paragraph 16(m) and 16(n); of the Indictment:

1. Give the name or names of any banks in which accounts were opened, other than the authorized depository bank of the BISD.

2. State when such accounts were opened and closed, and the amount of money deposited therein and the name or names of the person or persons making such deposits.

3. Identify or describe the tax funds which could be withdrawn by the Defendant D. C. Chapa, and give the ultimate facts as to such withdrawals.

4. Give the ultimate facts as to what the Government will claim D. C. Chapa did with such tax funds withdrawn from unauthorized bank accounts.

5. State the ultimate facts as to the participation of each Defendant in the acts involved in this paragraph.

6. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

U. Concerning Count 1, Paragraph 16(o), of the Indictment:-

1. Identify the equipment, materials and supplies involved under this paragraph.

2. Name the Defendants, their associates and supporters, who made personal use of the alleged equipment, material and supplies; and give the approximate dates on which such use was made.

3. Identify the alleged payments for equipment, materials and supplies out of BISD funds; and in such connection, give the dates, amounts, and the names of the persons involved in such transactions.

4. Identify the BISD records which were falsified in connection with the allegations of this paragraph; and also designate the specific items which were falsified.

5. Identify the annual reports of the school funds of the BISD involved in this paragraph, and specifically designate the items involved which were falsified and which allegedly concealed a misuse of BISD funds.

6. Give the ultimate facts as to the participation of each Defendant in connection with the acts involved in this paragraph.

7. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

V. Concerning Count 1, Paragraph 16(p), of the Indictment:

1. Identify the taxpayers' checks payable to the BISD, which were cashed, involved in this paragraph; and give the dates, amounts and the name of the person drawing such checks.

2. Give the name or names of the person or persons who cashed such taxpayers' checks, and state when and where they were cashed, in each instance.

3. Give the name or names of the person or persons who obtained and converted the proceeds of such checks to their own use, and state when and where the said funds were so obtained and converted.

4. Identify each tax receipt allegedly fraudulently issued, as to the number, date, the place where issued, by whom issued or signed, and the name of the person to whom the receipt was made out or given.

5. State whether or not any of the Indictment Counts Numbered One through Nineteen, involve any transactions of the nature described in this paragraph.

6. Identify the taxpayers' checks involved in this paragraph, which were not actually received by BISD or receipted for by one of its agents.

7. Give the ultimate facts as to the participation of each Defendant in connection with the acts alleged in this paragraph.

8. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

W. Concerning Count 1, Paragraph 16(q), of the Indictment:

1. Give the name or names of the person or persons who actually prepared the annual reports of school funds for the BISD, for each year mentioned in this paragraph.

2. Identify the specific items in each of said reports, which are fraudulent or false; and state why they are false.

3. State specifically whether or not the said annual reports, in each instance, were approved, or not approved, by the Board of Trustees of BISD; and state the form of such approval, if the Government claims that such annual reports were actually approved.

4. Give the ultimate facts as to what the Government will contend was and is required by Art. 301, Penal Code, particularly as to what should have been contained in said annual reports of BISD, and each of them; and state specifically which of the items contained in said reports were false, and why they were false.

5. State the ultimate facts as to the participation of each Defendant in the acts alleged in this paragraph.

6. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and

as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

X. Concerning Count 1, Paragraph 16(r), of the Indictment:

1. Give the name or names of the person or persons who used the United States mails in transmitting the annual reports, as alleged in said paragraph.

2. State the date upon which each of the annual reports involved under this paragraph was transmitted by mail.

3. Give the specific facts as to whether the depository bank transmitted the said annual reports by mail, or whether such action was taken by some other person; and if by some other person, give the name or names of the person or persons involved.

4. State the place at which the said annual reports were deposited in the United States mail.

5. State where each of the Defendants was located at the time the United States mails were used in transmitting the said annual reports.

6. State how the allegations of this paragraph are related to the alleged scheme to defraud; and particularly state the ultimate facts as to the participation of each Defendant in the alleged mailing of said annual reports.

7. State how the acts alleged in this paragraph are related to the alleged scheme to defraud within the Houston Division of the United States District Court for the Southern District of Texas, since it appears that the report related to a school district located in Duval County, Texas, which is within the Corpus Christi Division of the United States District Court for the Southern District of Texas, and was received in Austin, Travis County, Texas, the last named city being within the jurisdiction of the United States District Court for the Western District of Texas.

8. State what the Government will contend in connection with such annual reports, with reference to whether any of the Defendants were under a legal duty imposed by law to make said reports or to approve the same.

9. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

Y. Concerning Count 1, Paragraph 16(s), of the Indictment:

1. Identify the specific items involved under the allegations of this paragraph, particularly any items contained in the annual reports involving any fraudulent checks.

2. State why the alleged pretenses and representations in such annual reports were false or fraudulent.

3. State the ultimate facts as to each Defendant's participation in the acts alleged in this paragraph.

4. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

Z. Concerning Count 1, Paragraph 16(t), of the Indictment:

1. Identify the funds deposited in banks other than the authorized depository bank for the BISD, as to dates and amounts, and state by whom the said

funds were deposited in such unauthorized bank or banks.

2. Identify the funds deposited in unauthorized banks, which were not accounted for in each annual report of the BISD.

3. Identify the taxpayers' checks which were allegedly cashed and the proceeds thereof obtained by the Defendants, as to the date, amount, by whom drawn, and the payee thereof.

4. State the ultimate facts as to the participation of each Defendant in the acts alleged in this paragraph.

5. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the presentations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

AA. Concerning Count 1, Paragraph 16(u), of the Indictment:

1. Identify each fraudulent misuses of BISD funds, which was concealed by submission of the annual reports mentioned in this paragraph.

2. Specify each false pretense or representation made to the State Commissioner of Education and the Texas Education Agency, and further state why the same were false or not correct.

3. Identify the persons, concerns or agencies defrauded because of the allegations contained in this paragraph; and give the ultimate facts relied on to show that the said annual reports served to lull the defrauded parties.

4. State the ultimate facts as to the participation of each Defendant in the acts alleged in this paragraph.

5. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principle under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

BB. Concerning Count 1, Paragraph 16(v), of the Indictment:

1. Describe the acts of each Defendant, which were covered up by concealing or destroying canceled checks, bank statements and other records of the

BISD; and further describe as accurately as possible the concealed checks, bank statements and other records which were destroyed.

2. State the ultimate facts as to the participation of each Defendant in the acts involved under this paragraph.

3. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

CC. Concerning Count 1, Paragraph 16(w), of the Indictment:

1. Describe the acts of each Defendant, which were covered up by concealing or destroying canceled checks, bank statements and other records of the BISD; and further describe as accurately as possible the canceled checks, bank statements and other records which were destroyed.

2. State the ultimate facts as to the participation of each Defendant in the acts involved under this paragraph.

3. State as to each Defendant, whether he directly engaged in the conduct charged, or performed the acts, or made the representations or pretenses involved in this paragraph, or intended to or would do so; and as to each Defendant, whether the Government claims or will contend that he is a principal or punishable as a principal under Sec. 2, Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the conduct charged, the acts performed, or the representations or pretenses made, or the offense committed; and state the ultimate facts as to each such Defendant under the allegations of this paragraph.

DD. Concerning Count 1, Paragraph 17, of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused a letter to be taken from a postoffice within the Houston Division of the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place at which said letter was mailed or deposited in the United States mails.

4. Give the name of the person who physically mailed the said letter.

5. State the ultimate facts as to each Defendant's participation in connection with the mailing or delivery of the letter involved in this paragraph.

6. State the name or names of the person or persons who took the said letter from a postoffice.

7. State how and in what respect causing said letter to be taken from a postoffice in the Houston Division of the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

8. State the name of the person and the name of each Defendant, if any, who directly did the act of mailing or directly caused the said letter to be taken from a postoffice, and which Defendants, if any, the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code. As to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the said letter to be taken from a postoffice; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter to be so taken from a postoffice, in the Houston Division of the United States District Court for the Southern District of Texas.

EE. Concerning Count 2 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused a letter to be taken from a postoffice within the Houston Division of the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place at which said letter was mailed or deposited in the United States mails.

4. Give the name of the person who physically mailed the said letter.

5. State the ultimate facts as to each Defendant's participation in connection with the mailing or delivery of the letter involved in this paragraph.

6. State the name or names of the person or persons who took the said letter from a postoffice.

7. State how and in what respect causing said letter to be taken from a postoffice in the Houston Division of the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

8. State the name of the person and the name of each Defendant, if any, who directly did the act of mailing or directly caused the said letter to be taken from a postoffice, and which Defendants, if any, the Government will contend are principals or punishable as principals under Sec. 2, Title 18, United States Code. As to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured, or caused the said letter to be taken from a postoffice; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter to be so taken from a postoffice, in the Houston Division of the United States District Court for the Southern District of Texas.

FF. Concerning Count 3 of the Indictment:

1. State the manner or means by which Defendants, and each of them, caused to be placed in an authorized depository for mail matter, a letter and check as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place or location at which said letter was mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection wih the mailing of or placing of the said letter and check in an authorized depository for mail.

6. State how and in what respect causing said letter and check to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter and check involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said

category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

GG. Concerning Count 4 of the Indictment:

1. State the manner or means by this the Defendants, and each of them, caused to be placed in an authorized depository for mail matter, a letter and check as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place or location at which said letter was mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing of or placing of the said letter and check in an authorized depository for mail.

6. State how and in what respect causing said letter and check to be placed in an authorized

depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter and check involved in this Count in an authorized depository for mail matter, and state the names of the Defendant, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

HH. Concerning Count 5 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused a letter to be taken from a postoffice within the Houston Division of the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place at which said letter was mailed or deposited in the United States mails.

4. Give the name of the person who physically mailed the said letter.

5. State the ultimate facts as to each Defendant's participation in connection with the mailing or delivery of the letter involved in this paragraph.

6. State the name or names of the person or persons who took the said letter from a postoffice.

7. State how and in what respect causing said letter to be taken from a postoffice in the Houston Division of the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

8. State the name of the person and the name of each Defendant, if any, who directly did the act of mailing or directly caused the said letter to be taken from a postoffice, and which Defendants, if any, the Government will contend are principals or punishable as principals under Sec. 2, Title 18, United States Code. As to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured, or caused the said letter to be taken from a postoffice; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter to be so taken from a postoffice, in the Houston Division of the United States District Court for the Southern District of Texas.

II. Concerning Count 6 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused to be placed

in an authorized depository for mail matter, a letter and check as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place or location at which said letter was mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing of or placing of the said letter and check in an authorized depository for mail.

6. State how and in what respect causing said letter and check to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter and check involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the

said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

JJ. Concerning Count 7 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused a letter to be taken from a postoffice within the Houston Division of the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place at which said letter was mailed or deposited in the United States mails.

4. Give the name of the person who physically mailed the said letter.

5. State the ultimate facts as to each Defendant's participation in connection with the mailing or delivery of the letter involved in this paragraph.

6. State the name or names of the person or persons who took the said letter from a postoffice.

7. State how and in what respect causing said letter to be taken from a postoffice in the Houston Division of the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

8. State the name of the person and the name of each Defendant, if any, who directly did the act of mailing or directly caused the said letter to be taken from a postoffice, and which Defendants, if any, the Government will contend are principals or punishable as principals under Sec. 2, Title 18, United States Code. As to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured, or caused the said letter to be taken from a postoffice; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter to be so taken from a postoffice, in the Houston Division of the United States District Court for the Southern District of Texas:

KK. Concerning Count 8 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused to be placed in an authorized depository for mail matter, a letter and check as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place or location at which said letter was mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing of or placing of the said letter and check in an authorized depository for mail.

6. State how and in what respect causing said letter and check to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter and check involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, procured or caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

LL. Concerning Count 9 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused to be placed in an authorized depository for mail matter, a letter and

check as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place or location at which said letter was mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing or placing of the said letter and check in an authorized depository for mail.

6. State how and in what respect causing said letter and check to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter and check involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and

state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

MM. Concerning Count 10 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused to be placed in an authorized depository for mail matter, a letter and check as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place or location at which said letter was mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing of or placing of the said letter and check in an authorized depository for mail.

6. State how and in what respect causing said letter and check to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter and check involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

NN. Concerning Count 11 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused to be placed in an authorized depository for mail matter, a letter and check as therein set out, in the Houston Division of the United States District Court for the Southern Division of Texas.

2. State the contents of the letter involved in this Count.

3. State the place or location at which said letter was mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing of or placing of the said letter and check in an authorized depository for mail.

6. State how and in what respect causing said letter and check to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter and check involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

OO. Concerning Count 12 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused to be placed in an authorized depository for mail matter, a letter and check as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place or location at which said letter was mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing of or placing of the said letter and check in an authorized depository for mail.

6. State how and in what respect causing said letter and check to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter and check involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are prin-

cipals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

PP. Concerning Count 13 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused to be placed in an authorized depository for mail matter, a letter and check as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place or location at which said letter was mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing of or placing of the said letter and check in an authorized depository for mail.

6. State how and in what respect causing said letter and check to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter and check involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

QQ. Concerning Count 14 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused to be placed in an authorized depository for mail matter, a letter and check as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place or location at which said letter was mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing of or placing of the said letter and check in an authorized depository for mail.

6. State how and in what respect causing said letter and check to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter and check involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on

the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

RR. Concerning Count 15 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused to be placed in an authorized depository for mailmatter, a letter and check as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place or location at which said letter was mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing of or placing of the said letter and check in an authorized depository for mail.

6. State how and in what respect causing said letter and check to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter and check involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

SS. Concerning Count 16 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused to be placed in an authorized depository for mail matter, a letter and check as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place or location at which said letter was mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter,

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing of or placing of the said letter and check in an authorized depository for mail.

6. State how and in what respect causing said letter and check to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter and check involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

TT. Concerning Count 17 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused to be placed

in an authorized depository for mail matter, a letter, statement and invoices as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter, statement and invoices involved in this Count.

3. State the place or location at which said letter, statement and invoices were mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection with the mailing of or placing of the said letter, statement and invoices in an authorized depository for mail.

6. State how and in what respect causing said letter, statement and invoices to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter, statement and invoices involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or

caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be so deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

UU. Concerning Count 18 of the Indictment:

1. State the manner or means by which the Defendants, and each of them, caused a letter to be taken from a postoffice within the Houston Division of the Southern District of Texas.

2. State the contents of the letter involved in this Count.

3. State the place at which said letter was mailed or deposited in the United States mails.

4. Give the name of the person who physically mailed the said letter.

5. State the ultimate facts as to each Defendant's participation in connection with the mailing or delivery of the letter involved in this paragraph.

6. State the name or names of the person or persons who took the said letter from a postoffice.

7. State how and in what respect causing said letter to be taken from a postoffice in the Houston Division of the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

8. State the name of the person and the name of each Defendant, if any, who directly did the act of mailing or directly caused the said letter to be taken from a postoffice, and which Defendants, if any, the Government will contend are principals or punishable as principals under Sec. 2, Title 18, United States Code. As to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured, or caused the said letter to be taken from a postoffice; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter to be so taken from a postoffice, in the Houston Division of the United States District Court for the Southern District of Texas.

VV. Concerning Count 19 of the Indictment:

1. State the manner of means by which the Defendants, and each of them, caused to be placed in an authorized depository for mail matter, a letter, statement and invoices as therein set out, in the Houston Division of the United States District Court for the Southern District of Texas.

2. State the contents of the letter, statement and invoices involved in this Count.

3. State the place or location at which said letter, statement and invoices were mailed or deposited in the United States mails.

4. State the name of the person who mailed the said letter.

5. State the ultimate facts as to the participation of each Defendant in connection with the mail-

ing of or placing of the said letter, statement and invoices in an authorized depository for mail.

6. State how and in what respect causing said letter, statement and invoices to be placed in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas, was for the purpose of executing the said scheme and artifice, or attempting to do so.

7. State the name of the person and of each Defendant, if any, who directly placed the letter, statement and invoices involved in this Count in an authorized depository for mail matter, and state the names of the Defendants, if any, who the Government will contend are principals or punishable as principals under Sec. 2 of Title 18, United States Code; and as to each Defendant in the said category of principal, state whether he aided, abetted, counseled, commanded, induced, procured or caused the said letter and other instruments mentioned therein to be placed in an authorized depository for mail matter; and state the ultimate facts as to each Defendant under the allegations of this paragraph; and state the specific act or acts on the part of each Defendant, which caused the said letter or other instruments to be deposited in an authorized depository for mail in the Houston Division of the United States District Court for the Southern District of Texas.

WW. Concerning Count 20 of the Indictment:

1. State the place where the alleged conspiracy was entered into; particularly whether within the Houston Division of the Southern District of Texas, or elsewhere; and if the said place was in some other Division of this Court, designate it.

2. Give the ultimate facts as to the participation of each Defendant in connection with the formation of said alleged conspiracy.

3. State the names of those Defendants who initially joined in said alleged conspiracy, and the names of those Defendants who joined at a later date, giving such dates; and state the dates upon which any of the Defendants left such conspiracy.

4. State the offense or offenses which constituted the subject-matter of such conspiracy; and particularly state if only one offense or more than one such offense against the laws of the United States is involved in the First Count of this Indictment.

5. State the names of the officers, agents or representatives of the two corporate Bank Defendants who participated in the formation of the alleged conspiracy or in any overt act to effect the objects of same.

6. As to each of the overt acts alleged in the first nineteen Counts of the Indictment, state the ultimate facts as to the participation of each Defendant therein, as is hereinabove requested; and state the names of the persons who directly committed such acts, and the names of the Defendants who are claimed to be principals under Sec. 2 of Title 18, United States Code, in connection therewith.

7. State the place where each Defendant was located at the time of the commission of the overt acts alleged in the first nineteen Counts of the Indictment.

8. Concerning Overt Act No. 2, state the ultimate facts as to how each of the Defendants caused the tax receipts described therein to be delivered by the

United States mails at Houston, Texas; and state the place or location at which the said receipts were placed in the United States mails; and by whom the same were placed therein.

9. Concerning Overt Act No. 3, state the ultimate facts as to how each of the Defendants caused the tax receipts described therein to be delivered by the United States mails at Houston, Texas; and state the place or location at which the said receipts were placed in the United States mails; and by whom the same were placed therein.

10. Concerning Overt Act No. 4, state the ultimate facts as to how each of the Defendants caused the tax receipts described therein to be delivered by the United States mails at Houston, Texas; and state the place or location at which the said receipts were placed in the United States mails; and by whom the same were placed therein.

11. Concerning Overt Act No. 5, state the ultimate facts as to how each of the Defendants caused the tax receipts described therein to be delivered by the United States mails at Houston, Texas; and state the place or location at which the said receipts were placed in the United States mails; and by whom the same were placed therein.

12. State the ultimate facts as to how each of the Defendants caused a letter with an enclosed check to be deposited in an authorized depository for mail in Houston, Texas; (a) and further state the name of the person who placed the letter involved in the United States mails; (b) and further state where each Defendant was

located at the time the said letter was so deposited in Houston, Texas; (c) and further state the contents or substance of said letter; and (d) state how causing said letter to be deposited in the mails at Houston, Texas, was in furtherance of the alleged conspiracy.

13. Concerning Overt Act No. 7, state the relationship of said meeting held at Benavides, Texas, to the alleged scheme to defraud; and state the substance of the subject-matter of such meeting, or any conversation which took place between the parties named; and state where the other Defendants were located at the time of such meeting.

14. Concerning Overt Act No. 8, state the relationship of said meeting held at Benavides, Texas, to the alleged scheme to defraud; and state the substance of the subject-matter of such meeting, or any conversation which took place between the parties named; and state where the other Defendants were located at the time of such meeting.

15. Concerning Overt Acts Nos. 9, 10, 11 and 12, state the relationship of the acts involved to the scheme to defraud; and further state where each of the Defendants were located at the time the said checks were cashed; and give the name or names of the Defendants whom the Government contends were present, under such paragraphs.

XX. State the substance of any signed statement or statements made by Diego Heras and Jewell Mayfield, or of any written record of testimony given by them, or of oral statements by either of them. The said

Diego Heras and Jewell Mayfield are named as co-conspirators in the 20th Count of the Indictment, but they are not indicted in said Count or in any other Count thereof.

Under the wording of the Indictment and the nature of the charge, the testimony of said Diego Heras and Jewell Mayfield will be highly material to the Government's case. The fact that these two individuals are alleged to be co-conspirators with Defendants, but have not been indicted with them, indicates that they will be witnesses for the Government, or that they, and each of them, will be called upon to testify by the Government, upon the trial of this case. Such a situation further indicates that the said two individuals have been given immunity or have been promised immunity from prosecution by the Government, and there will be presented serious questions as to the credibility of the said witnesses and the weight to be given their testimony. It is probable or possible that the conviction or acquittal of the Defendants may depend upon the testimony to be given by the said Diego Heras and Jewell Mayfield.

Under such conditions, Defendants say that they should be given the substance of, or copies of, any statements made by the said Diego Heras and Jewell Mayfield given to, or in possession of, the Government's agents and attorneys, as well as any written record of testimony given or of oral statements made by either of them. In connection with the testimony of the said two witnesses, the Defendants say that they are entitled to the same prior to trial, in order to avoid surprise, prepare proper cross-examination, and permit timely efforts to ascertain evidence favorable to Defendants in such connection.

Conclusion

Defendants respectfully allege that the items sought may be material to the preparation of their defense, and each of them, and this request is reasonable.

Eleven defendants are being prosecuted under this Indictment, two of them being corporate bank defendants. A period of time of at least four years and five months is involved, during which period are involved many hundreds, and probably thousands, of BISD checks or vouchers, tax statements, receipts, letters and entries in BISD records, Texas Education Agency records, and other records. Hundreds of thousands of dollars were received and disbursed by the BISD and its depository bank during such period of time. Many hundreds, and probably thousands, of taxpayers may be involved. The annual reports of BISD, alone, involve many hundreds, and probably thousands, of entries.

The allegations of the indictment, and particularly Counts 1 and 20, which are the basic Counts involved, do not identify, describe or inform the Defendants with certainty as to the books, records, documents, letters, instruments and entries which may be involved, and which may be offered in evidence upon the trial of this case.

Defendants say that good cause exists for requesting the Bill of Particulars, and each item thereof, as hereinabove set out; that Defendants are entitled to such particulars and specifications in advance of trial in order to properly prepare each of their defenses and to secure a fair trial.

In particular, it appears probable that some, or possibly a majority, of the Defendants will be prosecuted as principals under Sec. 2, Title 18, United States Code. The particulars and specifications hereinabove requested are essential to enable such Defendants to properly prepare for trial; and in particular are essential so that the Defendants may rebut any evidence offered by the Government that they, or any of them, aided, abetted, counseled, commanded, induced, procured, or caused the commission of an offense, or acts to be done, in connection with each Count of the Indictment, and each subdivision thereof.

WHEREFORE, PREMISES CONSIDERED, Defendants, and each of them, pray that the above and foregoing Motion for Bill of Particulars, and each paragraph and subdivision thereof, be granted and sustained, and that an appropriate order be entered in connection therewith.

LUTHER E. JONES, JR.
Luther E. Jones, Jr.
338 Laurel Drive
Corpus Christi, Texas

PERCY FOREMAN
Percy Foreman
1116 Capital
Houston, Texas

T. GILBERT SHARPE
T. Gilbert Sharpe
P. O. Box 408
Brownville, Texas

Attorneys for Defendants

III.

Defendants move the Court for a change of venue, and for an order transferring this proceeding to the Corpus Christi Division of the United States District Court for the Southern District of Texas, for the following reasons:

A. It appears from the Indictment or from a Bill of Particulars filed or to be filed herein, that if any offense was committed, by the Defendants (which is not admitted, but is denied), the essential and ultimate facts relating thereto took place in the Corpus Christi Division of the United States District Court for the Southern District of Texas. In such connection, the Indictment does not allege a single specific or ultimate fact showing the occurrence of the offenses involved herein within the Houston Division of the United States District Court for the Southern District of Texas. The Indictment and the Bill of Particulars filed or to be filed herein show and will show that in connection with any letter sent or delivered by the United States mails, where a placing of such letter in an authorized depository for mail in the said Houston Division is alleged, that the said letter was to be delivered in Duval County, Texas, within the Corpus Christi Division of this Court; and where the Indictment alleges that a letter was taken from a postoffice within the Houston Division of the United States District Court for the Southern District of Texas, the same was mailed from Duval County, Texas, within the said Corpus Christi Division of this Court. In any event, any conduct or acts of the Defendants involved herein did not actually take place within the Houston Division of this Court, and in truth and in fact if any offense was committed, it was within the Corpus Christi Division of this Court, and trial of this cause should

be in a Division in which the offense, if any, was committed. This cause should be transferred to the Corpus Christi Division of this Court under Rule 18, Federal Rules of Criminal Procedure.

B. Alternatively, the Defendants allege that it appears from the Indictment or from a Bill of Particulars filed or to be filed herein, that the offenses alleged, if they were committed at all, which is not admitted, were committed in more than one Division of the United States District Court for the Southern District of Texas; that is, the Houston Division and the Corpus Christi Division of said Court; and in the interest of justice this proceeding should be transferred to the Corpus Christi Division of this Court, where the offenses, if any, were committed as is shown by the said Indictment and Bill of Particulars. Such transfer to the Corpus Christi Division of this Court is and will be in the interest of justice for the following reasons:

1. The Defendants, and each of them, are residents of Duval, County, Texas, which is located approximately 250 miles from Houston, Texas. If they, and each of them, are required to face trial of this case at Houston, Texas, they will necessarily have to go to a distant place, will have to bring counsel who has already been retained to represent them, from Corpus Christi, Texas, to Houston, Texas; and will have to arrange for and incur the expense of taking their witnesses from Duval County, Texas, to Houston, Texas. In such connection, Defendants respectfully show that all or virtually all of the witnesses who may have to be called by the Defendants, reside in Duval County, Texas. Bringing such wit-

nesses to Houston, Texas, will involve a serious hardship upon the Defendants and the witnesses. There will be additional and unusual expenses in such connection, necessitated by the fact that there will be uncertainty as to the exact date or time when such witnesses will be called upon to testify, and a large number of them will therefore be required to wait for many days during the trial of the case. In this connection, the Defendants, collectively, estimate that more than_____witnesses who reside in Duval County, Texas, will be required to travel to Houston, Texas, and remain there a portion of the time that the case is on trial. The expenses in connection with such witnesses would be unusual, unnecessary, and unjustifiable. The residences and businesses of the Defendants and a large majority of the witnesses which may be called by Defendants are located approximately 70 miles from Corpus Christi, Texas. Travel time by automobile between the residences of the said witnesses in Duval, County, and Corpus Christi, Texas, does not exceed two hours. In the event this case is tried at Corpus Christi, Texas, the witnesses for Defendants could be alerted to attend court on short notice, and, in addition, their attendance could be secured by service of process, within a short period of time. The Defendants and witnesses in such case would be near to their homes and businesses, and could travel back and forth to court daily, if necessary, without great loss of time and expense, all of which would be involved in this case if tried at Houston, Texas. All of the above mentioned expenses, additional time and hardships can be avoided if this case can be tried at Corpus Christi, Texas. In truth and in fact venue of this case could have, and should have been, laid in the Corpus Christi Division of this Court by its original institution there.

C. The business headquarters of each Defendant herein is located in Duval, County, Texas. As hereinabove stated in the preceding paragraph, in the event Defendants are required to face trial of this case in Houston, they will be away from, not only their homes and families, but also their businesses, which would cause them additional, unusual, and unnecessary expenses. Further in such connection, each of the banks which are named as Defendants herein are corporations domiciled in and with principal place of business in Duval County, Texas. Such loss of time, inconvenience and unjustifiable expense may be avoided by the transfer of this cause for trial at Corpus Christi, Texas.

D. All, or practically all, of the records which relate to the transactions on which the Indictment is based, are, or should be, located in Duval County, Texas, including the records of the BISD, the two corporate bank Defendants, as well as the records of the individual Defendants and the records of witnesses who may be called by the Defendants.

E. For all of the above and foregoing reasons, a trial of this cause in Houston, Texas, would result in fairness being absent. This is especially true because whatever acts are involved on the part of the Defendants, in truth and in fact took place within the Corpus Christi Division of this Court; the trial of the case at Houston would be at a distant place from the homes, residences and friends of the Defendants, and out of their own bailiwick; and would result in unusual and unjustifiable expenses, loss of time and inconvenience to the Defendants and any necessary witnesses. In effect, such a trial of this case at Houston, Texas, would deprive the Corpus Christi Division of this Court of its rightful jurisdiction and venue.

F. Defendants have separately filed herein, Motion for Bill of Particulars, which, if granted in whole or in part, may, and probably will, furnish additional facts and reasons why this cause should be transferred as above prayed for. Defendants reserve the right to amend this Motion to Transfer in such event.

In support of this motion, there are attached hereto and made a part hereof, affidavits of the following persons:

WHEREFORE, PREMISES CONSIDERED, the Defendants, and each of them, pray that this cause be transferred for trial to the Corpus Christi Division of the United States District Court for the Southern District of Texas, either under Rule 18 or Rule 21, Federal Rules of Criminal Procedure, and for such other relief as may be proper in the premises.

LUTHER E. JONES, JR.
Luther E. Jones, Jr.
338 Laurel Drive
Corpus Christi, Texas.

PERCY FOREMAN
Percy Foreman
1116 Capital
Houston, Texas.

T. GILBERT SHARPE
T. Gilbert Sharpe
P. O. Box 408
Brownsville, Texas.
Attorneys for Defendants.

IV.

The Defendants, and each of them, move the Court for an order requiring Malcolm R. Wilkey, the United States Attorney for the Southern District of Texas, to produce, and to permit the Defendants to inspect and to copy or photograph, the following:

A. All documents, books, papers and objects (except memoranda prepared by Government counsel) obtained by the Government, its investigative agents or employees, in any manner, by seizure or process or otherwise.

1. In the course of the investigation by the grand jury, which resulted in the return of indictment herein; and

2. In the course of the Government's investigation and preparation for grand jury purposes and for the trial of this cause, if such books, papers, documents and objects have been presented to the grand jury or are to be offered as evidence on the trial of this cause.

B. Any and all documents, letters, checks, invoices, vouchers or other instruments directly mentioned or involved in Counts One through Twenty of the Indictment herein; and particularly the following:

1. The documents, papers, books or records involved in Count 1, as follows:

a. Relating to Count 1, Paragraph 2, and to the alleged appointment of D. C. Chapa as Tax Assessor and Collector of BISD, and to his alleged appointment as Road Inspector of Duval County, Texas.

b. As to Count 1, Paragraph 14, any documents, instruments, papers or records involved in formulating or devising the alleged scheme to defraud.

c. As to Count 1, Paragraph 15, the BISD checks or vouchers involved in Subdivisions (a) and (b), and the Annual Report of School Funds of the BISD, involved in Subdivision (c) thereof.

d. As to Count 1, Paragraph 16, the documents, instruments, papers and records involved in Subdivisions (a) through (w) thereof; and any BISD checks or vouchers which were falsified, issued to persons and concerns for services rendered, for labor and materials furnished, for supplies and equipment furnished, where the same were not rendered or furnished; any BISD checks upon which endorsements were forged; any BISD checks cashed by the depository bank on forged endorsements or on genuine endorsements of persons who were issued fraudulent checks; any BISD checks and vouchers cashed at the City Utilities of Benavides; any BISD checks drawn on unauthorized bank accounts; any taxpayers' checks payable to BISD, which were cashed and the proceeds converted; any records of the two corporate bank Defendants, reflecting entries of the BISD checks involved, or the payment or withdrawal of moneys from the State Available Fund or BISD funds, which are involved in Count 1 or its subdivisions; any deposit slips or bank records of unauthorized bank accounts; the annual reports shown in Subdivision (q) of Paragraph 16, Count 1; any microfilm bank records of the two corporate bank Defendants, relating to checks, vouchers of either BISD or taxpayers, involved in said Paragraph 16 or any of its subdivisions;

any tax statements, tax receipts, or correspondence concerning taxes or to taxpayers of BISD, sent or delivered through the United States mails; any and all other books, records, documents, checks or vouchers which may be offered on intended to be offered by the Government upon the trial of this case, relating to said Count 1, Paragraph 16, of any of its subdivisions.

e. As to Count 1, Paragraph 17, the letter taken from a postoffice within the Houston Division of the Southern District of Texas, on or about September 29, 1952.

2. As to Count 2, Paragraph 2, the letter taken from a postoffice within the Houston Division of the Southern District of Texas, on or about July 21, 1952.

3. As to Count 3, Paragraph 2, the letter placed in an authorized depository for mail in the Houston Division of the Southern District of Texas, on September 29, 1952, together with the enclosed check of Humble Oil and Refining Company.

4. As to Count 4, Paragraph 2, the letter caused to be placed in an authorized depository for mail in the Houston Division of the Southern District of Texas, on September 23, 1953, together with the enclosed check of Humble Oil and Refining Company.

5. As to Count 5, Paragraph 2, the letter caused to be taken from a postoffice in the Houston Division of the Southern District of Texas, on May 27, 1953.

6. As to Count 6, Paragraph 2, the letter caused to be placed in an authorized depository for mail matter in the Houston Division of the Southern District of Texas, on Septmeber 25, 1951, together with the enclosed check of Humble Oil and Refining Company.

7. As to Count 7, Paragraph 2, the letter caused to be taken from a postoffice in the Houston Division of the Southern District of Texas, on December 4, 1952.

8. As to Count 8, Paragraph 2, the letter placed in an authorized depository for mail matter, in the Houston Division of the Southern District of Texas, on September 25, 1953, together with the enclosed check of C. W. Hahl Properties.

9. As to Count 9, Paragraph 2, the letter placed in an authorized depository for mail matter, in the Houston Division of the Southern District of Texas, on September 21, 1951, together with the enclosed check of C. W. Hahl Company.

10. As to Count 10, Paragraph 2, the letter placed in an authorized depository for mail matter, in the Houston Division of the Southern District of Texas, on September 27, 1952, together with the enclosed check of C. W. Hahl Company.

11. As to Count 11, Paragraph 2, the letter placed in an authorized depository for mail matter, in the Houston Division of the Southern District of Texas, on September 28, 1951, together with the enclosed check of The Texas Company.

12. As to Count 12, Paragraph 2, the letter placed in an authorized depository for mail matter, in the Houston Division of the Southern District of Texas, on September 26, 1952, together with the enclosed check of The Texas Company.

13. As to Count 13, Paragraph 2, the letter caused to be placed in an authorized depository for mail matter, in the Houston Division of the Southern District of Texas, on September 30, 1953, together with the enclosed check of The Texas Company.

14. As to Count 14, Paragraph 2, the letter placed in an authorized depository for mail matter, in the Houston Division of the Southern District of Texas, on September 30, 1953, together with the enclosed check of the Texas Pipe Line Company.

15. As to Count 15, Paragraph 2, the letter caused to be placed in an authorized depository for mail matter, in the Houston Division of the Southern District of Texas, on September 30, 1953, together with the enclosed check of J. E. Beall.

16. As to Count 16, Paragraph 2, the letter placed in an authorized depository for mail matter, in the Houston Division of the Southern District of Texas, on October 24, 1952, together with the enclosed check of J. E. Beall.

17. As to Count 17, Paragraph 2, the letter caused to be placed in an authorized depository for mail matter, in the Houston Division of the Southern District of Texas, on July 1, 1953, together with enclosure of statement of Continental Oil Company in account with

the BISD, dated May 25, 1953, and supporting invoices of A. Caballero, Jr., a dealer of Continental Oil Company.

18. As to Count 18, Paragraph 2, the letter taken from a postoffice in the Houston Division of the Southern District of Texas, on April 8, 1953, together with enclosed check of the Benavides Independent School District, Benavides Local Maintenance Fund, dated March 31, 1953.

19. As to Count 19, Paragraph 2, the letter placed in an authorized depository for mail matter, in the Houston Division of the Southern District of Texas, on April 1, 1953, together with an enclosure of statement of Continental Oil Company in account with the BISD, dated March 20, 1953, and supporting invoices of A. Caballero, Jr., a dealer of Continental Oil Company.

20. As to Count 20, the checks, documents, tax receipts and other instruments involved in Count 20 and in Overt Acts Numbers 1 through 12 thereof, and particularly the following:

a. Any document, instrument or record relating to the formation of the alleged conspiracy.

b. As to Overt Act No. 2, the tax receipts therein enumerated.

c. As to Overt Act No. 3, the tax receipts therein enumerated.

d. As to Overt Act No. 4, the tax receipts therein mentioned.

e. As to Overt Act No. 5, the tax receipts therein enumerated.

f. As to Overt Act No. 6, the letter deposited in an authorized depository for mail, at Houston, Texas, on September 30, 1952, together with the enclosed check of Texas Pipe Line Company.

g. As to Overt Act No. 7, any documents, instruments or records involved in said special meeting of the Board of Trustees of the BISD.

h. As to Overt No. 8, any documents, instruments or records involved in the special meeting of the Board of Trustees of the BISD, held on January 13, 1953.

i. As to Overt Act No. 9, the check of J. E. Beall, allegedly given by D. C. Chapa to Ramiro Morin on November 8, 1952.

j. As to Overt Act No. 10, the check of the Barbara Oil Company, allegedly given by D. C. Chapa to Ramiro Morin on November 15, 1952.

k. As to Overt Act No. 11, the checks therein enumerated and described, allegedly given by D. C. Chapa to Ramiro Morin on November 22, 1952.

l. As to Overt Act No. 12, the check of the Jones Laughlin Supply, dated September 26, 1952, allegedly cashed by D. C. Chapa at the Merchants Exchange Bank, Benavides, Texas.

C. Any signed statement or statements made by Diego Heras and Jewell Mayfield, or any written record of testimony given or of oral statements made by each of them; they having been named as co-conspirators in the 20th Count of the Indictment, but not indicated in said Count or in any other Count thereof.

Under the wording of the Indictment and the nature of the charge, the testimony of said Diego Heras and Jewell Mayfield will be highly material to the Government's case. The fact that these two individuals are alleged to be co-conspirators with Defendants, but have not been indicted with them, indicates that they will be witnesses for the Government, or that they, and each of them, will be called upon to testify by the Government, upon the trial of this case. Such a situation further indicates that the said two individuals have been given immunity or have been promised immunity from prosecution by the Government, and there will be presented serious questions as to the credibility of the said witnesses and the weight to be given their testimony. It is probable or possible that the conviction or acquittal of the Defendants may depend upon the testimony to be given by the said Diego Heras and Jewell Mayfield.

Under such conditions, Defendants say that they should be (allowed to inspect and copy or photograph) any statements made by the said Diego Heras and Jewell Mayfield, given to or in possession of the Government's agents and attorneys, as well as any written record of testimony given, or of oral statements made, by either of them; or that Defendants should be furnished with copies of the same. Prior inspection of such documents and information is

essential in order to avoid surprise, prepare proper cross-examination, and permit timely efforts to obtain evidence favorable to Defendants in such connection.

Conclusion

Defendants respectfully allege that the items sought may be material to the preparation of their defense, and each of them, and this request is reasonable.

Eleven defendants are being prosecuted under this Indictment, two of them being corporate bank defendants. A period of time of at least four years and five months is involved, during which period are involved many hundred, and probably thousands, of BISD checks or vouchers, tax statements, receipts, letters, and entries in BISD records, Texas Education Agency records, and other records. Hundreds of thousands of dollars were received and disbursed by the BISD and its depository bank during such period of time. Many hundreds, and probably thousands, of taxpayers may be involved. The annual reports of BISD, alone, involve many hundreds, and probably thousands, of entries.

The allegations of the Indictment, and particularly Counts 1 and 20, which are the basic Counts involved, do not identify, describe or inform the Defendants with certainty as to the books, records, documents, letters, instruments and entries which may be involved, and which may be offered in evidence upon the trial of this case.

Defendants allege that production and inspection of such documents in advance of trial, is necessary and essential to the proper preparation of each of their defenses.

Inspection by Defendants and their counsel of documentary evidence to be used by the Government on the trial of this case, or introduced to the Grand Jury, is necessary to avoid surprise, prepare cross-examination, permit timely efforts to obtain evidence favorable to Defendants in such connection, and to thereby prepare their defense and secure a fair trial.

By prior inspection of said documents and information, by evidence therein contained and by evidence developed from information therein contained, Defendants will, in aid of their motions, and at the trial of the case, prove the mullity of the Indictment and disprove the Government's contentions and case.

It appears probable that some, or possibly a majority, of the Defendants will be prosecuted as principals, under Sec. 2, Title 18, United States Code. Prior inspection of said documents and information is essential to enable such Defendants to properly prepare for trial, and in particular is essential so that Defendants may rebut any evidence offered by the Government that they, or any of them, aided, abetted, counseled, commanded, induced, procured or caused the commission of an offense, or acts to be done in connection with such documents, instruments, letters, books and records.

WHEREFORE, Defendants pray that this Motion to Produce and to permit the Defendants to inspect, copy or photograph the said documents, books, papers, instruments and objects, be granted; and that the United States Attorney for the Southern District of Texas, and any other investigative agent or employee of the Government, connected

with this case, be commanded to produce and file for inspection and copying by Defendants, well in advance of trial, and at a time, place and date to be fixed by the Court, the documents, books, papers, records, objects and information set out hereinabove; and for such other and further relief as may be appropriate in the premises.

Luther E. Jones, Jr.
338 Laurel Drive
Corpus Christi, Texas.

Percy Foreman
1116 Capital
Houston, Texas.

T. Gilbert Sharpe, P. O. Box 408
Brownsville, Texas.
Attorneys for Defendants

CONCLUSION, AND CERTIFICATE OF SERVICE OF COPY

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the Court fix a date for filing of the Government's reply to each of the above and foregoing motions; that the Court fix a date for hearing the same and for oral argument thereon; and that upon final hearing, each and all of the above and foregoing motions be granted; and for such other and further relief as may be proper in the premises.

LUTHER E. JONES, JR.
Luther E. Jones, Jr.
338 Laurel Drive
Corpus Christi, Texas.

PERCY FOREMAN
Percy Foreman
1116 Capital
Houston, Texas.

T. GILBERT SHARPE
T. Gilbert Sharpe
P. O. Box 408
Brownsville, Texas.

Attorneys for Defendants.

A copy of the foregoing Motion to Dismiss the Indictment and for appropriate relief, including Motion to Quash and Dismiss the Indictment; Motion for Bill of Particulars; Motion for Change of Venue and to Transfer Proceeding to the Corpus Christi Division of the United States District Court for the Southern District of Texas; and Motion to Produce and Permit Defendants to Inspect, Copy or Photograph Documents, Books, Papers and Objects; has this 15th day of June, 1956, been delivered to Honorable Malcolm R. Wilkey, United States Attorney for the Southern District of Texas, at Houston, Texas.

T. GILBERT SHARPE
T. Gilbert Sharpe
of Counsel for Defendants.

100 Affidavits in Support of Motions to Quash and Dismiss Indictment, For Bill of Particulars, For Change of Venue and to Transfer to the Corpus Christi Division.

(Filed, June 22, 1956)

THE STATE OF TEXAS,
COUNTY OF JIM WELLS.

BEFORE ME the undersigned authority, on this day personally appeared B. F. (Tom) Donald Jr., who being duly sworn, deposes and says:

My name is B. F. (Tom) Donald Jr. I reside in Alice, Jim Wells County, Texas, and have lived in such place for the past 31 years.

I am 49 years of age, married, and my family consists of my wife and one child whose name is as follows:

Thomas P. Donald.

I am engaged in the Insurance and Banking business.

I am one of the Defendants charged by indictment in Criminal Cause Number 12829 in the United States District Court for the Southern District of Texas, Houston Division. Sometime ago I arranged to retain Mr. Luther Jones, an attorney at law of Corpus Christi, Texas, to represent me in this matter. If this case is tried at Houston, Texas, Mr. Jones will be required to travel from Corpus Christi to Houston and remain there throughout the trial.

It is difficult for me to say at this time how many witnesses I will need to call in connection with my defense of said case, however, on the basis of present information, I am certain that all, or practically all, of the witnesses

who may be called to testify for me in the event it should be necessary or I should be required to offer evidence in said case, reside in Duval County, Texas, or in the vicinity thereof. I believe that I will need to arrange for the attendance of at least 12 witnesses who reside in Duval County or in the vicinity thereof to testify in my behalf, and probably will have to arrange for other witnesses in addition thereto. It will be very difficult, expensive and inconvenient to arrange for my witnesses to travel to Houston, Texas, to testify in this case, each of the defendants and such witnesses would be required to be away from their homes, families, businesses and employment during the time that the case is on trial. If the case can be tried at Corpus Christi, Texas, such difficulties, expense and inconvenience will be avoided. In addition, it may develop that during the course of said trial, the testimony of other witnesses will be needed in connection with evidence offered by the Government, which cannot be anticipated or foreseen prior to the time such testimony or evidence is offered. If the case is tried at Houston, Texas, it will be very difficult for me to arrange for the attendance of such witnesses on short notice. However, if the case is tried at Corpus Christi, Texas, the attendance of such witnesses could be readily arranged or secured by subpoena or other process of court, all within a short period of time. The city of Houston, Texas is located more than 250 miles from Duval County, and the residence of the witnesses I may need; while Corpus Christi is located approximately only 70 miles from the residence of such witnesses. I feel that I will be at a great disadvantage if the case is tried at Houston, Texas, because of such facts, and particularly because of the difficulty in arranging for witnesses at a distance.

Further, I cannot now anticipate with accuracy the documents, records or instruments which I may need in connection with my defense; but the records of the Benavides Independent School District, the banks involved, and other public or private records which might be pertinent in connection with my defense, are all located in Duval County, Texas, or in the vicinity thereof.

The above and foregoing affidavit is made in connection with the motions of the Defendants, filed in Criminal Cause Number 12829 in the United States District Court, Southern District of Texas, Houston Division, and particularly in support of their motion to quash and dismiss the indictment, motion for bill of particulars, motion to transfer the case from the Houston Division to the Corpus Christi Division of the United States District Court for the Southern District of Texas, and motion to produce documents, instruments, books, records, etc., and for such purpose only.

B. F. (TOM) DONALD, JR.
B. F. (Tom) Donald, Jr.

SWORN TO AND SUBSCRIBED BEFORE ME, this 20th day of June, A. D. 1956.

REMIGIO M. GARZA
Notary Public in and for Jim Wells County, Texas.

(Seal)

THE STATE OF TEXAS,
COUNTY OF DUVAL.

BEFORE ME, the undersigned authority, on this day personally appeared Jesus G. Garza, who being duly sworn, deposes and says:

My name is Jesus G. Garza. I reside in Benavides, Duval County, Texas, and have lived in such place for the past 53 years.

I am 55 years of age, married, and my family consists of my wife and two children whose names are as follows:
Maria Estella Garcia

Nita Elda Olson

I am the Marshall for the City of Benavides, without a salary.

I am one of the Defendants charged by indictment in Criminal Cause Number 12829 in the United States District Court for the Southern District of Texas, Houston Division. Sometime ago I agreed to retain Mr. Luther Jones, an attorney at law of Corpus Christi, Texas, to represent me in this matter. If this case is tried at Houston, Texas, Mr. Jones will be required to travel from Corpus Christi to Houston and remain there throughout the trial.

It is difficult for me to say at this time how many witnesses I will need to call in connection with my defense of said case, however, on the basis of present information, I am certain that all, or practically all, of the witnesses

who may be called to testify for me in the event it should be necessary or I should be required to offer in evidence in said case, reside in Duval County, Texas, or in the vicinity thereof. I believe that I will need to arrange for the attendance of at least 12 witnesses who reside in Duval County or in the vicinity thereof to testify in my behalf, and probably will have to arrange for other witnesses in addition thereto. It will be very difficult, expensive and inconvenient to arrange for my witnesses to travel to Houston, Texas, to testify in this case, each of the defendants and such witnesses would be required to be away from their homes, families, businesses and employment during the time that the case is on trial. If the case can be tried at Corpus Christi, Texas, such difficulties, expense and inconvenience will be avoided. In addition, it may develop that during the course of said trial, the testimony of other witnesses will be needed in connection with evidence offered by the Government, which cannot be anticipated or foreseen prior to the time such testimony or evidence is offered. If the case is tried at Houston, Texas, it will be very difficult for me to arrange for the attendance of such witnesses on short notice. However, if the case is tried at Corpus Christi, Texas, the attendance of such witnesses could be readily arranged or secured by subpoenas or other process of court, all within a short period of time. The city of Houston, Texas, is located more than 250 miles from Duval County, and the residence of the witnesses I may need; while Corpus Christi is located approximately only 70 miles from the residences of such witnesses. I feel that I will be at a great disadvantage if the case is tried at Houston, Texas, because of such facts, and particularly because of the difficulty in arranging for witnesses at a distance.

Further, I cannot now anticipate with accuracy the documents, records or instruments which I may need in connection with my defense; but the records of the Benavides Independent School District, the banks involved, and other public or private records which might be pertinent in connection with my defense, are all located in Duval County, Texas, or in the vicinity thereof.

I am a man of limited means, and the expense and inconvenience involved in arranging for the defense of my case and for the attendance of witnesses at Houston, Texas, would be difficult and probably beyond my means.

The above and foregoing affidavit is made in connection with the motions of the Defendants, filed in Criminal Cause Number 12829 in the United States District Court, Southern District of Texas, Houston Division, and particularly in support of their motion to quash and dismiss the indictment, motion for bill of particulars, motion to transfer the case from the Houston Division to the Corpus Christi Division of the United States District Court for the Southern District of Texas, and motion to produce documents, instruments, books, records, etc., and for such purpose only.

JESUS G. GARZA
Jesus G. Garza.

SWORN TO AND SUBSCRIBED BEFORE ME, this 20th day of June, A.D. 1956.

MARIA ESTELLA HAUGHT
Notary Public in and for Duval County, Texas

(Seal)

THE STATE OF TEXAS,
COUNTY OF DUVAL.

BEFORE ME, the undersigned authority, on this day personally appeared D. C. Chapa, who, being duly sworn, deposes and says:

My name is D. C. Chapa, I reside in Benavides, Duval County, Texas, and have lived in such place for the past 59 years.

I am 59 years of age, married, and my family consists of my wife and 6 children whose names are as follows:

Celia Hilda Guajardo
Oscar Carrillo
Olivero P. Carrillo
Ramiro D. Carrillo
Elma C. Stockwell
Emma C. Gavito

I am engaged in the Ranching business.

I am one of the Defendants charged by indictment in Criminal Cause Number 12829 in the United States District Court for the Southern District of Texas, Houston Division. Sometime ago I arranged to retain Mr. Luther Jones, an attorney at law of Corpus Christi, Texas, to represent me in this matter. If this case is tried at Houston, Texas, Mr. Jones will be required to travel from Corpus Christi to Houston and remain there throughout the trial.

It is difficult for me to say at this time how many witnesses I will need to call in connection with my defense of said case, however, on the basis of present information,

I am certain that all, or practically all, of the witnesses who may be called to testify for me in the event it should be necessary or I should be required to offer evidence in said case, reside in Duval County, Texas, or in the vicinity thereof. I believe that I will need to arrange for the attendance of at least 12 witnesses who reside in Duval County or in the vicinity thereof to testify in my behalf, and probably will have to arrange for other witnesses in addition thereto. It will be very difficult, expensive and inconvenient to arrange for my witnesses to travel to Houston, Texas, to testify in this case, each of the defendants and such witnesses would be required to be away from their homes, families, businesses and employment during the time that the case is on trial. If the case can be tried at Corpus Christi, Texas, such difficulties, expense and inconvenience will be avoided. In addition, it may develop that during the course of said trial, the testimony of other witnesses will be needed in connection with evidence offered by the Government, which cannot be anticipated or foreseen prior to the time such testimony or evidence is offered. If the case is tried at Houston, Texas, it will be very difficult for me to arrange for the attendance of such witnesses on short notice. However, if the case is tried at Corpus Christi, Texas, the attendance of such witnesses could be readily arranged or secured by subpoena or other process of court, all within a short period of time. The City of Houston, Texas, is located more than 250 miles from Duval County, and the residence of the witnesses I may need; while Corpus Christi is located approximately only 70 miles from the residences of such witnesses. I feel that I will be at a great disadvantage if the case is tried at Houston, Texas, because of such facts, and par-

ticularly because of the difficulty in arranging for witnesses at a distance.

Further, I cannot now anticipate with accuracy the documents, records or instruments which I may need in connection with my defense; but the records of the Benavides Independent School District, the banks involved, and other public or private records which might be pertinent in connection with my defense, are all located in Duval County, Texas, or in the vicinity thereof.

The above and foregoing affidavit is made in connection with the motions of the Defendants, filed in Criminal Cause Number 12829 in the United States District Court, Southern District of Texas, Houston Division, and particularly in support of their motion to quash and dismiss the indictment, motion for bill of particulars, motion to transfer the case from the Houston Division to the Corpus Christi Division of the United States District Court for the Southern District of Texas, and motion to produce documents, instruments, books, records, etc., and for such purpose only.

D. C. CHAPA
D. C. Chapa.

SWORN TO AND SUBSCRIBED BEFORE ME, this 20th day of June, A.D. 1956.

MARIA ESTELLA HAUGHT
Notary Public in and for Duval County, Texas.

(Seal)

THE STATE OF TEXAS
COUNTY OF DUVAL.

BEFORE ME, the undersigned authority, on this day personally appeared Santiago Garcia, who, being duly sworn, deposes and says:

My name is Santiago Garcia. I reside in Benavides, Duval County, Texas, and have lived in such place for the past 49 years.

I am 49 years of age, married, and my family consists of my wife and one child whose name is as follows:

Maria Elva Garcia.

I am engaged in the business of Filling Station Operator.

I am one of the Defendants charged by indictment in Criminal Cause Number 12829 in the United States District Court for the Southern District of Texas, Houston Division. Sometime ago I arranged to retain Mr. Luther Jones, an attorney at law of Corpus Christi, Texas, to represent me in this matter. If this case is tried at Houston, Texas, Mr. Jones will be required to travel from Corpus Christi to Houston and remain there throughout the trial.

It is difficult for me to say at this time how many witnesses I will need to call in connection with my defense of said case, however, on the basis of present information, I am certain that all, or practically all, of the witnesses who may be called to testify for me in the event it should be necessary or I should be required to offer evidence in said case, reside in Duval County, Texas, or in the vicinity thereof. I believe that I will need to arrange for the attend-

ance of at least 12 witnesses who reside in Duval County or in the vicinity thereof to testify in my behalf, and probably will have to arrange for other witnesses in addition thereto. It will be very difficult, expensive and inconvenient to arrange for my witnesses to travel to Houston, Texas, to testify in this case, each of the defendants and such witnesses would be required to be away from their homes, families, businesses and employment during at the time that the case is on trial. If the case can be tried at Corpus Christi, Texas, such difficulties, expense and inconvenience will be avoided. In addition, it may develop that during the course of said trial, the testimony of other witnesses will be needed in connection with evidence offered by the Government, which cannot be anticipated or foreseen prior to the time such testimony or evidence is offered. If the case is tried at Houston, Texas, it will be very difficult for me to arrange for the attendance of such witnesses on short notice. However, if the case is tried at Corpus Christi, the attendance of such witnesses could be readily arranged or secured by subpoena or other process of court, all within a short period of time. The City of Houston, Texas, is located more than 250 miles from Duval County, and the residence of the witnesses I may need; while Corpus Christi is located approximately only 70 miles from the residences of such witnesses. I feel that I will be at a great disadvantage if the case is tried at Houston, Texas, because of such facts, and particularly because of the difficulty in arranging for witnesses at a distance.

Further, I cannot now anticipate with accuracy the documents, records or instruments which I may need in connection with my defense; but the records of the Benavides Independent School District, the banks involved, and

other public or private records which might be pertinent in connection with my defense, are all located in Duval County, Texas, or in the vicinity thereof.

I am a man of limited means, and the expense and inconvenience involved in arranging for the defense of my case and for the attendance of witnesses at Houston, Texas, would be difficult and probably beyond my means.

The above and foregoing affidavit is made in connection with the motions of the Defendants, filed in Criminal Cause Number 12829 in the United States District Court, Southern District of Texas, Houston Division, and particularly in support of their motion to quash and dismiss the indictment, motion for bill of particulars, motion to transfer the case from the Houston Division to the Corpus Christi Division of the United States District Court for the Southern District of Texas, and motion to produce documents, instruments, books, records, etc., and for such purpose only.

SANTIAGO GARCIA
Santiago Garcia

SWORN TO AND SUBSCRIBED BEFORE ME, this 20th day of June, A.D. 1956.

MARIA ESTELLA HAUGHT
Notary Public in and for Duval County, Texas.

(Seal)

THE STATE OF TEXAS,
COUNTY OF DUVAL.

BEFORE ME, the undersigned authority, on this day personally appeared Octavio Saenz, who, being duly sworn, deposes and says:

My name is Octavio Saenz, I reside in Benavides, Duval County, Texas, and have lived in such place for the past 51 years.

I am 51 years of age, married, and my family consists of my wife and 4 children whose names are as follows:

Octavio Saenz Jr.
Roberto H. Saenz
Maria Marta Saenz
Ana Isabel Saenz

I am engaged in the business of Railroad Station Agent, I am employed by The Texas-Mexican Railroad Co.

I am one of the Defendants charged by indictment in Criminal Cause Number 12829 in the United States Court for the Southern District of Texas, Houston Division. Sometime ago I arranged to retain Mr. Luther Jones, an attorney at law of Corpus Christi, Texas to represent me in this matter. If this case is tried at Houston, Texas, Mr. Jones will be required to travel from Corpus Christi to Houston and remain there throughout the trial.

It is difficult for me to say at this time how many witnesses I will need to call in connection with my defense of said case, however, on the basis of present information, I am certain that all, or practically all, of the witnesses

who may be called to testify for me in the event it should be necessary or I should be required to offer evidence in said case, reside in Duval County, Texas, or in the vicinity thereof. I believe that I will need to arrange for the attendance of at least 12 witnesses who reside in Duval County or in the vicinity thereof to testify in my behalf, and probably will have to arrange for other witnesses in addition thereto. It will be very difficult, expensive and inconvenient to arrange for my witnesses to travel to Houston, Texas, to testify in this case, each of the defendants and such witnesses would be required to be away from their homes, families, businesses and employment during the time that the case is on trial. If the case can be tried at Corpus Christi, Texas, such difficulties, expense and inconvenience will be avoided. In addition, it may develop that during the course of said trial, the testimony of other witnesses will be needed in connection with evidence offered by the Government, which cannot be anticipated or foreseen prior to the time such testimony or evidence is offered. If the case is tried at Houston, Texas, it will be very difficult for me to arrange for the attendance of such witnesses on short notice. However, if the case is tried at Corpus Christi, Texas, the attendance of such witnesses could be readly arranged or secured by subpoena or other process of court, all within a short period of time. The City of Houston, Texas, is located more than 250 miles from Duval County, and the residence of the witnesses I may need; while Corpus Christi is located approximately only 70 miles from the residences of such witnesses. I feel that I will be at a great disadvantage if the case is tried at Houston, Texas, because of such facts, and particularly because of the difficulty in arranging for witnesses at a distance.

Further, I cannot now anticipate with accuracy the documents, records or instruments which I may need in connection with my defense; but the records of the Benavides Independent School District, the banks involved, and other public or private records which might be pertinent in connection with my defense, are all located in Duval County, Texas, or in the vicinity thereof.

I am a man of limited means, and the expense and inconvenience involved in arranging for the defense of my case and for the attendance of witnesses at Houston, Texas, would be difficult and probably beyond my means.

The above and foregoing affidavit is made in connection with the motions of the Defendants, filed in Criminal Cause Number 12829 in the United States District Court, Southern District of Texas, Houston Division, and particularly in support of their motion to quash and dismiss the indictment, motion for bill of particulars, motion to transfer the case from the Houston Division to the Corpus Christi Division of the United States District Court for the Southern District of Texas, and motion to produce documents, instruments, books, records, etc., and for such purpose only.

OCTAVIO SAENZ
Octavio Saenz

SWORN TO AND SUBSRIBED BEFORE ME, this 20th day of June, A.D. 1956.

MARIA ESTELLA HAUGHT
Notary Public in and for Duval County, Texas.

THE STATE OF TEXAS,
COUNTY OF DUVAL.

BEFORE ME, the undersigned authority, on this day personally appeared Jesus Oliveira, who, being duly sworn, deposes and says:

My name is Jesus Oliveira. I reside in Benavides, Duval County, Texas, and have lived in such place for the past 64 years.

I am 64 years of age, married, and my family consists of my wife and 6 children whose names are as follows:

Jesus Oliveira Jr.
Amando Oliveira
Luis Oliveira
Elvira Couling
Gloria Salinas
Esperanza Ruiz

I am in the ranching business and own a hardware store.

I am one of the Defendants charged by indictment in Criminal Cause Number 12829 in the United States District Court for the Southern District of Texas, Houston Division. Sometime ago I arranged to retain Mr. Luther Jones, an attorney at law of Corpus Christi, Texas, to represent me in this matter. If this case is tried at Houston, Texas, Mr. Jones will be required to travel from Corpus Christi, to Houston and remain there throughout the trial.

It is difficult for me to say at this time how many witnesses I will need to call in connection with my de-

fense of said case, however, on the basis of present information, I am certain that all, or practically all, of the witnesses who may be called to testify for me in the event it should be necessary or I should be required to offer evidence in said case, reside in Duval County, Texas, or in the vicinity thereof. I believe that I will need to arrange for the attendance of at least 12 witnesses who reside in Duval County or in the vicinity thereof to testify in my behalf, and probably will have to arrange for other witnesses in addition thereto. It will be very difficult, expensive and inconvenient to arrange for my witnesses to travel to Houston, Texas, to testify in this case, each of the defendants and such witnesses would be required to be away from their homes, families, businesses and employment during the time that the case is on trial. If the case can be tried at Corpus Christi, Texas, such difficulties, expense and inconvenience will be avoided. In addition, it may develop that during the course of said trial, the testimony of other witnesses will be needed in connection with evidence offered by the Government, which cannot be anticipated or foreseen prior to the time such testimony or evidence is offered. If the case is tried at Houston, Texas, it will be very difficult for me to arrange for the attendance of such witnesses on short notice. However, if the case is tried at Corpus Christi, Texas, the attendance of such witnesses could be readily arranged or secured by subpoena or other process of court, all within a short period of time. The City of Houston, Texas, is located more than 250 miles from Duval County, and the residence of the witnesses I may need; while Corpus Christi is located approximately only 70 miles from the residences of such witnesses. I feel that I will be at a great disadvantage if the

case is tried at Houston, Texas, because of such facts, and particularly because of the difficulty in arranging for witnesses at a distance.

Further, I cannot now anticipate with accuracy the documents, records or instruments which I may need in connection with my defense; but the records of the Benavides Independent School District, the banks involved, and other public or private records which might be pertinent in connection with my defense, are all located in Duval County, Texas, or in the vicinity thereof.

The above and foregoing affidavit is made in connection with the motions of the Defendants, filed in Criminal Cause Number 12829 in the United States District Court, Southern District of Texas, Houston Division, and particularly in support of their motion to quash and dismiss the indictment, motion for bill of particulars, motion to transfer the case from the Houston Division to the Corpus Christi Division of the United States District Court for the Southern District of Texas, and motion to produce documents, instruments, books, rec-ords, etc., and for such purpose only.

JESUS OLIVEIRA
Jesus Oliveira

SWORN TO AND SUBSCRIBED BEFORE ME, this 20th day of June, A.D. 1956.

MARIA ESTELLA HAUGHT
Notary Public in and for Duval County, Texas.

THE STATE OF TEXAS,
COUNTY OF DUVAL.

BEFORE ME, the undersigned authority, on this day personally appeared O. P. CARRILLO, who, being duly sworn, deposes and says:

My name is O. P. Carrillo. I am 31 years of age. I was born at Benavides, Texas, and have lived there all my life. I am an attorney at law, having graduated from St. Mary's University School of Law in May of 1952, and I have practiced law in Duval County, Texas, with my office at San Diego, Texas, since my graduation from Law School.

I have read over the affidavits of D. C. Chapa, B. F. (Tom) Donald, Jr., Jesus G. Garza, Santiago Garcia, Octavio Saenz, Jesus Oliveira, Oscar Carrillo, Sr., designed to be filed in Criminal Cause Number 12829 in the District Court of the United States, Southern District of Texas, Houston Division, in support of the motions of Defendants filed therein, and particularly in support, of Defendants' motions to transfer this cause to the Corpus Christi Division of the United States District Court for the Southern District of Texas, for a bill of particulars, and to quash and dismiss the indictment for production of certain books, documents, instruments, etc.

I have been personally acquainted with each of the above named Defendants for the entire period of my life, from the time that I could remember anything; except the Defendant Tom Donald, with whom I have been acquainted for a period of about ten years. I have read the indictment pending in said cause, and have considered

the problem of arranging for the attendance of witnesses and for the production of documentary evidence at Houston, Texas. A trial at Houston would be very difficult, expensive and inconvenient from the standpoint of all the Defendants, as is more fully set out in each of the affidavits of the Defendants hereinabove named. I conservatively estimate that at least fifty witnesses may have to be called in behalf of the Defendants, in the event they elect to put on evidence. It would be very difficult to arrange for the attendance of such witnesses, who all reside in Duval County, Texas, or in the vicinity thereof, at the trial of this case in Houston, Texas. Such procedure would result in unusual and unjstifiable expense to each defendant particularly since it could not be known with certainty the exact time any particular witness would have to be called, and therefore much waiting time would be involved. On the other hand, if this cause should be transferred to the Corpus Christi Division of this Court, and tried at Corpus Christi, the attendance of Defendants' witnesses could be either arranged for or secured by process of court within a few hours, and the said witnesses would be required to travel not more than approximately 70 miles from their residences to Court at Corpus Christi, Texas; whereas, if the trial is held at Houston, said witnesses would have to travel in excess of 250 miles from their homes, necessitating additional time and expense.

As to the Defendant George B. Parr, I have been personally acquainted with him for all my life. I know that his residence and principal place of business are located in San Diego, Duval County, Texas.

I know that the records of the Benavides Independent School District, which cover the years 1949 through 1953, are located at the offices of said School District at Benavides, Texas; and that the principal office and records of the San Diego State Bank (now in liquidation), is at San Diego, Duval County, Texas, and that the principal office and records of The Texas State Bank of Alice (now in liquidation) is located at Alice, Jim Wells County, Texas, approximately 26 miles from Benavides, Texas.

The above and foregoing affidavit is made in connection with the motions of the Defendants, filed in Criminal Cause Number 12829 in the United States District Court, Southern District of Texas, Houston Division, and particularly in support of their motion to quash and dismiss the indictment, motion for bill of particulars, motion to transfer the case from the Houston Division to the Corpus Christi Division of the United States District Court for the Southern District of Texas, and motion to produce documents, instruments, books, records, etc., and for such purpose only.

O. P. CARRILLO
O. P. Carrillo.

SWORN TO AND SUBSCRIBED BEFORE ME, this 20th day of June, A. D. 1956.

MARIA ESTELLA HAUGHT
Notary Public in and for Duval County, Texas.

THE STATE OF TEXAS,
COUNTY OF DUVAL.

BEFORE ME, the undersigned authority, on this day personally appeared Oscar Carrillo, Sr. who being duly sworn, deposes and says:

My name is Oscar Carrillo, Sr. I reside in Benavides, Duval County, Texas, and have lived in such place for the past 34 years.

I am 34 years of age, married, and my family consists of my wife and 8 children whose names are as follows:

David Homero Carrillo
Oscar Rene Carrillo
Ludivina Carrillo
Adriana Lamar Carrillo
Rebeca Ana Carrillo
Evangelina Carrillo
Lucinda Carrillo

I am engaged in the Ranching business.

I am one of the Defendants charged by indictment in Criminal Cause Number 12829 in the United States District Court for the Southern District of Texas, Houston Division. Sometime ago I arranged to retain Mr. Luther Jones, an attorney at law of Corpus Christi, Texas, to represent me in this matter. If this case is tried at Houston, Texas, Mr. Jones will be required to travel from Corpus Christi to Houston and remain there throughout the trial.

It is difficult for me to say at this time how many witnesses I will need to call in connection with my defense

of said case, however, on the basis of present information, I am certain that all, or practically all, of the witnesses who may be called to testify for me in the event it should be necessary or I should be required to offer evidence in said case, reside in Duval County, Texas, or in the vicinity thereof. I believe that I will need to arrange for the attendance of at least 12 witnesses who reside in Duval County or in the vicinity thereof. I believe that I will need to arrange for the attendance of at least 12 witnesses who reside in Duval County or in the vicinity therof to testify in my behalf, and probably will have to arrange for other witnesses in addition thereto. It will be very difficult, expensive and inconvenient to arrange for my witnesses to travel to Houston, Texas, to testify in this case, each of the defendants and such witnesses would be retried at Corpus Ghristi, Texas, such difficulties, expense and inconvenience will be avoided. In addition, it may develop that during the course of said trial, the testimony of other witnesses will be needed in connection with evidence offered by the Government, which cannot be anticipated or foreseen prior to the time such testimony or evidence is offered. If the case is tried at Houston, Texas, it will be very difficult for me to arrange for the attendance of such witnesses on short notice. However, if the case is tried at Corpus Christi, Texas, the attendance of such witnesses could be readily arranged or secured by subpoena or other process of court, all within a short period of time. The City of Houston, Texas, is located more than 250 miles from Duval County, and the residence of the witnesses I may need; while Corpus Christi is located approximately only 70 miles from the residences of such witnesses. I feel that I will be at a great disadvantage if

the case is tried at Houston, Texas, because of such facts, and particularly because of the difficulty in arranging for witnesses at a distance.

Further, I cannot now anticipate with accuracy the documents, records or instruments which I may need in connection with my defense; but the records of the Benavides Independent School District, the banks involved and other public or private records which might be pertinent in connection with my defense, are all located in Duval County, Texas, or in the vicinity thereof.

The above and foregoing affidavit is made in connection with the motions of the Defendants, filed in Criminal Cause Number 12829 in the United States District Court, Southern District of Texas, Houston Division, and particularly in support of their motion to quash and dismiss the indictment, motion for bill of particulars, motion to transfer the case from the Houston Division to the Corpus Christi Division of the United States District Court for the Southern District of Texas, and motion to produce documents, instruments, books, records, etc., and for such purpose only.

OSCAR CARRILLO, SR.
Oscar Carrillo, Sr.

SWORN TO AND SUBSCRIBED BEFORE ME, this 20th day of June, A. D. 1956.

MARIA ESETELLA HAUGHT
Notary Public in and for Duval County, Texas.

THE STATE OF TEXAS,
COUNTY OF JIM WELLS.

BEFORE ME, the undersigned authority, on this day personally appeared J. W. Roach, who being duly sworn, deposes and says:

My name is J. W. Roach. I am 55 years of age, and reside at Alice, Texas. I am presently working for The First State Bank of Alice, Texas.

For approximately 7 years I was employed by Texas State Bank of Alice. I am familiar with the general operation of said bank and its system of records during said period of time.

During the period from 1949 through 1953, the above named bank was depository for the Benavides Independent School District. The principal place of business of said bank was and is at Alice, Texas.

During said period of time, the Benavides Independent School District maintained a number of accounts at said Bank, at times had as many as 14 separate accounts.

For each of the above mentioned years, I conservatively estimate that Benavides Independent School District made deposits of at least $350,000.00; and withdrawals or disbursements were made in approximately the same amount. For each of said years, I estimate that at least 2,000 separate entries were made in the bank records in connection with the Benavides Independent School District accounts, including deposit slips, ledger entries, statements and other records.

The records of said Bank in connection with the accounts of the Benavides Independent School District are located at Alice, Texas.

J. W. ROACH
J. W. Roach

SWORN TO AND SUBSCRIBED BEFORE ME, this 20th day of June, A. D. 1956.

REMIGIO M. GARZA
Notary Public in and for Jim Wells County, Texas.

THE STATE OF TEXAS,
COUNTY OF DUVAL.

BEFORE ME, the undersigned authority, on this day personally appeared R. W. Milligan, who being duly sworn, deposes and says:

My name is R. W. Milligan.

I am 48 years of age, married, and live at Benavides, Texas. I have resided in Duval County, Texas, or the vicinity thereof for 23 years.

For a period of approximately 23 years, I have been employed by the Benavides Independent School District in the capacity of School Superintendent.

I am familiar with the general operation of the Benavides Independent School District, and of the business thereof, having had occasion to observe the same over a period of approximately 23 years.

During the years from 1949 through 1953, the Benavides Independent School District had approximately 65 teachers and other employees working for it. The number of teachers and employees varied from time to time, but averaged approximately the number stated above. Checks

or vouchers of the Benavides Independent School District were issued monthly to pay salaries of said employees; and, in addition, other checks and vouchers were issued in payment of other obligations of the Benavides Independent School District. During the school years 1949 through 1953, approximately 2000 checks or vouchers were issued each year. The annual report of School Funds of the Benavides Independent School District for each of said years contained a list of approximately 2000 checks or vouchers.

The records in connection with the above mentioned matters are kept at the offices of the Benavides Independent School District in Benavides, Texas.

Letters or mail sent by or from the Benavides Independent School District during the years 1949-1953 were placed in the U. S. Post Office at Benavides, Duval County, Texas; and letters or mail received by the Benavides Independent School District during said period were delivered to its Box at said Post Office in Benavides, Texas. I know this to be true of my own knowledge from my work, observation and experience as an employee of the Benavides Independent School District for more than 23 years.

R. W. MILLIGAN
R. W. Milligan

SWORN TO AND SUBSCRIBED BEFORE ME, this 20th day of June, A. D. 1956.

MARIA ESTELLA HAUGHT
Notary Public in and for Duval County, Texas.

THE STATE OF TEXAS,
COUNTY OF DUVAL.

BEFORE ME, the undersigned authority, on this day personally appeared Hilda Chapa Gonzalez, who, being duly sworn, deposes and says:

My name is Hilda Chapa Gonzalez.

I am 30 years of age, married, and live at Benavides, Texas. I have resided in Duval County, Texas, or the vicinity thereof for 30 years.

For a period of approximately 6 years, I have been employed by the Benavides Independent School District in the capacity of Deputy Tax Collector.

I am familiar with the general operation of the Benavides Independent School District, and tax office thereof, having had occasion to observe the same over a period of approximately 6 years.

There are Several Thousand tracts or parcels of land within the Benavides Independent School District, and tax assessments, statements, notices and receipts are made out in connection with same. The Benavides Independent School District, for the years from 1949 through 1953, collected from local tax assessments at least the amount of $600,000.00 each year.

The records in connection with the above mentioned matters are kept at the offices of the Benavides Independent School District in Benavides, Texas.

Letters or mail sent by or from the Benavides Independent School District during the years 1949-1953 were placed in the U. S. Post Office at Benavides, Duval County,

Texas; and letters or mail received by the Benavides Independent School District during said period were delivered to its Box at said Post Office in Benavides, Texas. I know this to be true of my own knowledge from my work, observation and experience as an employee of the Benavides Independent School District for more than 6 years.

HILDA CHAPA GONZALEZ
Hilda Chapa Gonzalez.

SWORN TO AND SUBSCRIBED BEFORE ME, this 20th day of June, A. D. 1956.

MARIA ESTELLA HAUGHT
Notary Public in and for Duval County, Texas.

120 GOVERNMENT'S REPLIES TO DEFENDANTS MOTION TO QUASH AND DISMISS INDICTMENT, DEFENDANTS' MOTION FOR BILL OF PARTICULARS, DEFENDANTS' MOTION FOR CHANGE OF VENUE AND DEFENDANTS' MOTION FOR DISCOVERY

(Caption Omitted)

(Filed July 9, 1956)

Comes now the United States of America, by Malcolm R. Wilkey, United States Attorney for the Southern District of Texas, and submits herewith Government's replies to

I. Defendants' motion to quash and dismiss the indictment.

II. Defendants' motion for bill of particulars.

III. Defendants' motion for change of venue.

IV. Defendants' motion for discovery;

and in addition thereto submits for the consideration of the Court the following exhibits:

1. Amended motion for transfer from the Western District of Texas, Austin Division, to the Southern District of Texas, Laredo or Corpus Christi Division for trial, U. S. v. Parr, Criminal No. 3866, Austin Division, Western District of Texas.

2. Order overruling amended motion of defendant for transfer under Rule 21(b), and order overruling defendant's motion for supplemental bill of particulars, U. S. v. Parr, supra.

3. Order on defendant's motion for subpoena duces tecum, U. S. v. Parr, supra.

4. Order to produce and permit inspection under Rule 16, U. S. v. Parr, supra.

5. Order overruling motion of defendant under Rule 17(c), with exception, U. S. v. Parr, supra.

6. Affidavit of Malcolm R. Wilkey, United States Attorney, in re Witnesses to be Subpoenaed at Trial of U. S. v. Parr, et al, Criminal 12,829, Houston Division, Southern District of Texas.

I.

121 REPLY TO DEFENDANTS' MOTION TO QUASH AND DISMISS THE INDICTMENT

I.

Defendants' Motion to Quash and Dismiss the indictment should be denied because:

A. Jurisdiction and venue lie in the Houston Division of the Southern District of Texas.

B. The indictment is not insufficient; it does not lack definiteness or fail to set out an offense against the laws of the United States.

C. The indictment is not duplicitous.

D. The indictment is not repugnant.

E. The indictment sufficiently alleges use of the mails.

The Government respectfully submits that defendants' motion should be denied.

/s/ MALCOLM R. WILKEY
Malcolm R. Wilkey
United States Attorney

/s/ EDGAR O. BOTTLER
Edgar O. Bottler
Assistant United States Attorney

II.

122 REPLY TO DEFENDANTS' MOTION FOR BILL OF PARTICULARS

1. The Government will furnish copies of the letters described in paragraph seventeen of Count One, para-

graphs two of Counts Two through Nineteen and in overt acts 2, 3, 4, 5, 6 of Count Twenty.

2. Except for the matters above set out, defendants' Motion for Bill of Particulars should be denied because:

A. The indictment fairly apprises defendants of the charges against them and enables defendants to avoid a second prosecution for the same offense.

B. The Government should not be required to furnish particulars as to matters which are not elements of the offense charged and which are purely evidentiary.

C. Particulars sought, if furnished, would disclose the prosecution's evidence and spread the prosecution's entire case before defendants.

D. Particulars requested are within the defendants' own knowledge, may be procured through sources available to them, or are evident from the indictment.

E. Defendants are not entitled to particulars which would be conclusions of law or legal theory of the prosecutions case.

F. The Bill of Particulars is unreasonable, the defendants seek impossible particulars from the Government, and the demand for them is vain, idle and frivolous.

G. Bill of particulars would unduly limit the evidence of the Government.

H. A Motion for Bill of Particulars is made within the sound discretion of the Trial Court and in this case should be denied.

Except as to the copies of the letters set out in 1 hereof and mentioned in the indictment, Defendants' Motion for Bill of Particulars should be denied.

Respectfully submitted,

/s/ MALCOLM R. WILKEY
Malcolm R. Wilkey
United States Attorney

/s/ EDGAR O. BOTTLER
Edgar O. Bottler
Assistant United States Attorney

III.

124 REPLY TO DEFENDANTS' MOTION FOR CHANGE OF VENUE

Defendants are not entitled to a change of venue because:

A. The particular offenses charged in this indictment were committed in the Houston Division ONLY; and

B. It would not be in the interest of justice to transfer this proceeding to the Corpus Christi Division.

1. *Reply to defendants' Point A.*

Point A of defendants' motion is predicated on Rule 18, under which, to entitle themselves to a change of venue, defendants must establish:

(1) That the particular offenses charged in this indictment were committed in the Corpus Christi Division; and

(2) That the particular offenses charged were not committed in the Houston Division.

The specific language of the indictment and the applicable authorities show that the offenses charged were committed in the Houston Division and nowhere else.

2. *Reply to defendants' Points B, C, D and E.*

These points of defendants' motion are predicated on Rule 21(b) under which, to entitle themselves to a change of venue, defendants must establish:

(1) That the particular offenses charged in this indictment were committed in the Corpus Division as well as in the Houston Division; AND

(2) That it would be in the interest of justice to grant the requested transfer.

As stated above, the specific language of this indictment and the applicable authorities clearly show that the particular offenses charged in this indictment were committed in the Houston Division only, not in the Corpus Christi Division. Furthermore, under the facts of this case it definitely would not be "in the interest of justice" to transfer this cause to the Corpus Christi Division.

The Government respectfully submits that the requested transfer should be denied under both Rules 18 and 21(b).

Respectfully submitted,

/s/ MALCOLM R. WILKEY
Malcolm R. Wilkey
United States Attorney

/s/ EDGAR O. BOTTLER
Edgar O. Bottler
Assistant United States Attorney

IV.

126 REPLY TO DEFENDANTS' MOTION FOR DISCOVERY

In accordance with Criminal Rule 16 the Government willingly will produce for inspection all documents obtained from others by seizure or process; under the criminal rules defendants are not entitled to further discovery, and therefore defendants' motion in all other particulars should be denied.

A. Defendants' demand: "All documents, books, papers and objects (except memoranda prepared by Government counsel) obtained by the Government, its investigative agents or employees, in any manner by seizure or process or otherwise."

Under Federal Criminal Rule 16 defendants are entitled to inspect, copy, or photograph documents in three categories

(1) Obtained from the defendants.

(2) Belong to the defendants.

(3) Obtained from others by seizure or process.

The Government has no documents obtained from or belonging to any of the defendants. The Government will produce all documents, books, papers and objects obtained by the Government from others by seizure or process, in complete accordance with Criminal Rule 16.

B. Defendants demand: "Any and all documents, letters, checks, invoices, vouchers or other instruments directly mentioned or involved in Counts One through Twenty of the indictment herein;"

If any of the above requested tangible objects were obtained by the Government from others by seizure or process, such tangible objects will be produced under the provisons of Rule 16, as stated above. There are certain tangible objects which are mentioned in the indictment which are not in the possession of the Government, and therefore the Government cannot produce the originals of these documents. However, as stated in the Government's reply to the defendants' request for a bill of particulars above, there are certain letters and checks mentioned in the indictment of which the Government has photostatic copies, and copies of same will be furnished to the defendants, as stated in the reply to the requested bill of particulars.

C. Defendants demand "Any signed statement or statements made by Diego Heras and Jewel Mayfield, or any written record of testimony given or of oral statements made by each of them; they having been named as co-conspirators in the Twentieth Count of the indictment, but not indicted in said count or in any other count thereof."

Such requested statements do not fall within either of the three categories of Federal Criminal Rule 16, the only discovery provision in the Federal Rules. Therefore it is respectfully submitted that the request for all matters under defendants' Point C should be denied.

Except as to those tangible objects obtained from others by seizure or process, the Government is not in possession of any material falling within Rule 16. The Government is willing to produce all such tangible objects obtained

from others by seizure or process. The remainder of defendants' motion should be denied.

Respectfully submitted,

/s/ MALCOLM R. WILKEY
Malcolm R. Wilkey
United States Attorney

/s/ EDGAR O. BOTTLER
Edgar O. Bottler
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that copies of the above replies and affidavits have been served upon counsel for defendants, Percy Foreman, Esq., Capitol Street, Houston, Texas, and Gilbert Sharpe, Esq., Sharpe, Cunningham & Garza, Brownsville, Texas, by deposit in the United States mail properly addressed this date.

/s/ MALCOLM R. WILKEY
Malcolm R. Wilkey
United States Attorney

9 July 1956.

EXHIBIT 1

128 AMENDED MOTION FOR TRANSFER OF THIS CASE FROM THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION TO THE SOUTHERN DISTRICT OF TEXAS, LAREDO OR CORPUS CHRISTI DIVISION FOR TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the defendant, George B. Parr, by his attorneys and on the following grounds moves the Court under

authority of Rule 21 (b), Federal Rules of Criminal Procedure, for an order transferring this cause to the Southern District of Texas, Laredo Division, or the Corpus Christi Division, so that all further proceedings in the matter, including trial, may be had in the Laredo Division or the Corpus Christi Division. The defendant moves this Court to transfer this case to the Laredo Division but if he be not lawfully entitled by virtue of the wording of Rule 21 (b), to have this case transferred to Laredo, he moves the Court to transfer this case to the Corpus Christi Division. If this case is transferred under Rule 21-(b), to the Corpus Christi Division, the defendant will then move that Court to transfer the cause to Laredo pursuant to an order theretofore entered by that Court.

I.

As will be made to appear from a Bill of Particulars the offense with which the defendant is charged, if it be an offense, was committed in the Southern District of Texas because the defendant prepared or caused to be prepared his income tax returns for each of the years 1949, 1950 and 1951 at San Diego, Duval County, Texas, in the Corpus Christi Division of the Southern District of Texas and because the defendant deposited or caused to be deposited a copy of his income tax return for each of the years 1949, 1950 and 1951 in the Alice sub-office of the Collector for the First District of Texas, which sub-office is located in the Southern District of Texas, Corpus Christi Division.

The offense, if any, therefore was committed in the Southern District of Texas as well as in the Western District of Texas.

II.

In the interest of justice, the proceeding should be transferred to the Southern District of Texas, Laredo Division, or to the Corpus Christi Division, as hereinafter more fully shown.

That an indictment identical except as to venue allegations with the indictment in this pending case was returned against this defendant in the Southern District of Texas, Corpus Christi Division, on November 15, 1954, being docketed as Criminal No. 6011, entitled United States of America vs. George B. Parr.

That the defendant George B. Parr was arraigned by Judge James V. Allred in the United States Courthouse at Corpus Christi on December 1, 1954, at which time he entered a plea of "not guilty".

Within the time permitted by law and the orders of Judge of said Corpus Christi Division, the defendant, George B. Parr, on January 3, 1955, filed (1) his Motion for a Bill of Particulars, (2) his Motion for Discovery and Inspection, (3) his Motion for Subpoena Duces Tecum, and (4) his Motion to Change the Venue in this case under Rule 21 (a) of the Federal Rules of Criminal Procedure from the Corpus Christi Division to the Laredo Division for trial.

The Government joined issue on all these motions and they were taken under submission by the Court after the Court had first received evidence in the form of affidavits

and counter-affidavits in support of and against the Motion for Change of Venue.

On April 27, 1955, a MEMORANDUM by Judge T. M. Kennerly, concurred in by Judge James V. Allred, disposed of the aforesaid motions, which MEMORANDUM was filed with the Clerk of the Corpus Christi Division on April 28, 1955. Formal orders directed by the MEMORANDUM were entered May 16, 1955, ordering the Government to furnish defendant with the particulars therein noted, ordering the Government to produce and permit inspection by defendant as therein set out, denying defendant's motion for subpoena duces tecum and transferring the case from the Corpus Christi Division, Southern District of Texas, to the Laredo Division, Southern District of Texas, for trial.

The indictment in this pending case was returned on May 3, 1955; and on May 5, 1955, the Government under the authority of Rule 48(a) of the Federal Rules of Criminal Procedure filed with the Clerk of the Corpus Christi Division, Southern District of Texas, a Motion for Leave to Dismiss the Indictment then pending in the Southern District of Texas, Corpus Christi Division, ordered transferred to the Laredo Division, against George B. Parr, Criminal No. 6011. Attached to the Motion so filed was an authorization from the Attorney General and a Statement of Reasons for Dismissal.

On May 16, 1955, the defendant George B. Parr filed his Opposition to Government's Application for Leave to Dismiss and a hearing was thereupon had before Judge T. M. Kennerly to whom it was submitted by direction of Judge James V. Allred by his Memorandum dated May 4, 1955.

The hearing before Judge Kennerly on said Motion to Dismiss and defendant's Opposition thereto having been concluded, an order was entered without the consent and over the objection of defendant dismissing the case then pending in the United States District Court for the Southern District of Texas, Laredo Division.

On May 20, 1955, defendant George B. Parr in Criminal 6011 pending in the Southern District of Texas, Laredo Division, took an appeal from the Judgment of Dismissal entered by Judge T. M. Kennerly on May 19, 1955, to the Court of Appeals for the Fifth Circuit by filing with the Clerk a Notice of Appeal in duplicate, Bond for costs and Designation of Record on Appeal and by Paying the fees, all in the manner and within the time prescribed by law and the Federal Rules of Criminal Procedure, and the Court of Appeals for the Fifth Circuit now has jurisdiction of said case.

On May 26, 1955, the Clerk of the United States Court of Appeals for the Fifth Circuit received from the Clerk of the United States District Court, Corpus Christi, Texas, a copy of Notice of Appeal and Clerks Statement of Docket Entries in the cause of George B. Parr vs. United States of America and on May 28, 1955, the attorneys for George B. Parr remitted a Postal Money Order in the sum of Twenty-five ($25.00) Dollars as an initial deposit on account of the Clerk's fees as requested by said Clerk and said case has now been docketed in said Court.

Defendant has been notified that the forty (40) copies of the Record of Appeal from the Southern District of Texas, Laredo Division will be completed within the next few days and said Record and the required number of copies of said Record will be promptly filed with the

Clerk of the Court of Appeals, one (1) copy with the Clerk of the Southern District of Texas, Laredo Division and three (3) copies thereof delivered to the United States Attorney for the the Southern District of Texas.

In the Appeal presently pending in the Court of Appeals for the Fifth Circuit appellant therein George B. Parr being the defendant herein, will urge (1) that the Order of May 19, 1955, entered by Judge T. M. Kennerly granting leave to the United States Attorney to dismiss the cause then pending in the Southern District of Texas, Laredo Division, Criminal No. 6011 was erroneous because it was granted during the trial without the consent and over the objection of defendant, and (2) that the case against the defendant George B. Parr initiated in the Corpus Christi Division, Southern District of Texas and transferred by the Court on Motion of the defendant from the Corpus Christi Division to the Laredo Division, Southern District of Texas, "so that all further proceedings in the matter, including trial, may be had in the Laredo Division, Southern District of Texas", has fixed the place of all further proceedings in his trial in the Laredo Division, Southern District of Texas and would thereby deprive the United States Attorney and/or the Attorney General of the right to select any other District or Division as the place for the trial of the defendant on the charges set out in the indictment brought in the Corpus Christi Division and transferred to the Laredo Division, Southern District of Texas, which are the identical charges as contained in the indictment pending in this Court.

To permit the United States Attorney to pursue the course undertaken by him by dismissing the indictment pending in the Laredo Division, Southern District of Texas

and proceed with the prosecution of the indictment pending in this District would be allowing him to circumvent the order of Judge T. M. Kennerly entered on May 16, 1955, transferring the case for trial from the Corpus Christi Division to the Laredo Division, Southern District of Texas. He would thereby establish his office as an Appellate body or board or bureau or office to review and pass on the validity of the May 16, 1955, order of Judge T. M. Kennerly not only without authority of but contrary to law.

He would by his own motion and by his own act change the venue from the Southern District of Texas to the Western District of Texas not withstanding the Federal Rules of Criminal Procedure which do not give him the right to move for a change of venue and do not give him the right to appeal from the order of the District Judge so transferring the same. More than ten (10) days have elapsed from the entry of the May 16, 1955 Order of Judge Kennerly changing the venue from the Corpus Christi Division to the Laredo Division, Southern District of Texas, and said order is now final in any event and cannot be appealed from by the United States Attorney and/or the Attorney General.

III.

Defendant resides and at all times material herein has resided at San Diego in Duval County, Texas, within the Southern District of Texas where he maintains his office and keeps his books of account and other records pertaining to his business and his activities for each of the years 1949, 1950 and 1951.

The witnesses to be called by the defendant at his trial, wherever the same may be had, for the most part reside in and around San Diego, Duval County, Texas, and all of them within the Southern District of Texas.

While defendant does not know and has not been able to learn the names of the witnesses to be called against him by the United States of America, notwithstanding he applied to the Court, Corpus Christi Division, Southern District of Texas, for an Order requiring that such list of witnesses be furnished him (which application was denied), he does know that substantially all, if not all, of the witnesses who were called by the Government before the Grand Jury at Houston in the Southern District of Texas which returned the indictment against him in the Corpus Christi Division resided and now reside in and near San Diego in Duval County, Texas, and all within the Southern District of Texas.

Moreover he knows that the witness or witnesses, independent of Government employees residing at Houston, called before the Grand Jury at San Antonio, Texas, which returned this pending indictment against him in the Austin Division reside at San Diego in Duval County, Texas, within the Southern District of Texas.

He knows that in a large measure the Government in this prosecution, whether tried in Austin or in Laredo, must depend as it does depend on the testimony of one Diego Heras who resides at Benavides in Duval County, Texas, where he has resided throughout his life. The said Diego Heras according to the statement given by him to the special agents working on this defendant's case, which said statement was strangely enough published in full in La Verda,

a publication published in Corpus Christi, Texas, and read in the area thereabouts, and from this statement of Diego Heras it appears that he is a confessed thief of large sums of money from the Benavides Independent School District.

It appears further that he had income for each of the years 1949, 1950 and 1951, for which he did not account to the United States Government.

He has not been indicted by the State of Texas for the wrong doing and violation of the Texas law shown in his statement to the special agents. He has been given immunity from prosecution under the State law.

He has not been indicted for wilfully attempting to evade his income taxes for the years 1949, 1950 and 1951, and the defendant herein relying on information and belief that the United States Attorney has promised the said Diego Heras that he will not be prosecuted for such offense or offenses.

The statement of Diego Heras made to the special agents is to the effect that the money stolen by him, Diego Heras, from the Benavides Independent School District was by him given to the defendant George B. Parr and it is these sums and on this testimony that the Government expects to prove or attempt to prove that this defendant wilfully attempted to evade and defeat the income taxes allged to be due by him on said income.

The defendant therefore means to, as he will, impeach and discredit the testimony of Diego Heras and show that his testimony is false and made only for the purpose of avoiding the bringing of prosecution both State and Federal against him. The witnesses who know and can testify to the falseness of Diego Heras's statement and of the fact

that he is not trustworthy and not worthy of belief under oath and has a bad reputation for truth and veracity and who can and will impeach and discredit him all live in and around San Diego, Duval County, Texas.

The witnesses who will be called by the Government, namely special agents Neindorf and Henley reside at Houston in the Southern District of Texas which is as easy of access to Laredo as to Austin.

From San Diego, Texas, to Laredo, Texas, is 88 miles by highway. From San Diego, Texas, to Austin, Texas, is 215 miles by highway. There is no air transportation or rail transportation from San Diego to Laredo or from San Diego to Austin. Thus the attendance of witnesses both for the defendant and for the Government at Laredo would be much more convenient and much less expensive than at Austin.

In order to require the attendance of witnesses in his own behalf, defendant must provide for their expenses which would be far less if the trial be had at Laredo than if the trial be had at Austin.

IV.

The United States of American has made a jeopardy assessment and has secured a lien on all of the property possessed by defendant, having done so in November or December 1954. He has thereby been deprived of funds or security with which he could obtain funds by borrowing money. He has not been able to secure funds from any source with which to fully compensate his attorneys and to the extent to which they have been compensated it has been from funds which he has been able to borrow from

friends on a wholly unsecured basis. Notwithstanding defendant is pictured in the press and over the radio and on television as a very rich man, frequently being referred to as a "millionaire", he has, by reason of the jeopardy assessment and the filing of the liens by the Government, been put in and under penurious circumstances, being without funds or source of funds to use to provide the expenses of witnesses he expects to and must call to testify in his behalf if he is to defend the charges pending against him.

Defendant is not "crying at the footsteps of this Court, he is merely stating the facts.

Defendant is entitled to the constitutional presumption of innocence and desires trial at the hands of a fair and impartial jury with his witnesses present throughout the trial.

V.

The next regular session of the United States District Court to be held at Laredo in the Southern District of Texas is the second Monday of September, 1955, and he can therefore have an early trial in the Laredo Division, Southern District of Texas.

The Court in the Southern District of Texas, Corpus Christi Division, as alleged hereinabove has already passed on his Motion for Bill of Particulars, his Motion for Inspection and his Motion under Rule 17(c) for Subpoena. Under those orders entered in this case which can and in all likelihood will be transferred to the Laredo Division, the Government will be required to comply with the commands therein contained and to disgorge the information therein sought within at most twenty (20) days after this

case is docketed in the Laredo Division, if this transfer be granted.

VI.

Judge T. M. Kennerly in a MEMORANDUM prepared by him on April 28, 1955, and filed in the Corpus Christi Division Southern District of Texas on April 29, 1955, after a hearing based on affidavits filed by both the defendant and the Government and briefs of all parties has expressly decided that the Government would not be "under any hardship" or "put to any disadvantage" by trial of this defendant on the charges pending against him in the Laredo Division, Southern District of Texas.

VII.

This prosecution of the defendant has been aided, encouraged and in fact demanded by the Honorable John Ben Shepperd the Attorney General of Texas and the Honorable Allan Shivers, Governor of Texas, each of whom have repeatedly according to the press, radio and television declared not only that this defendant should be prosecuted under the Income Tax Laws of the United States but under the laws of Texas for alleged embezzlement of public funds of the County of Duval and its various subdivisions.

The official offices of both the Attorney General and the Governor are at Austin where both reside.

The State of Texas and its various departments and agencies has many employees residing in Austin, many of whom are in one way or another dependent upon the

Governor's favor and to a lesser extent the favor of the Attorney General. Jury panels called for service in the United States District Court for the Western District, Austin Division have in the past numbered among the jurors so called a substantial number of employees of the State of Texas and its various agencies.

Presently and since December 1954 the same has been true innumerable investigations by the State Senate, by the State House of Representatives, by the Attorney General, by the State Auditor, by the State Department of Public Safety, by at least two Grand Juries and by at least one Court of Inquiry have been carried on largely under the direction of the Governor and the Attorney General involving alleged fraud in connection with the administration of the Veterans Land Board. Thus a tense situation created as aforesaid and kept before the public by newspapers, the radio and the television on alleged fraud as against the State of Texas has created an atmosphere of doubt and distrust of anyone to whom the Governor and/or the Attorney General points the finger of suspicion.

The defendant herein George B. Parr, though he has had nothing whatsoever to do with and has not been mentioned in connection with the alleged Veterans Land fraud; will suffer and be victimized thereby if tried in the Austin Division of the Western District of Texas because the same Shivers finger and the same Shepperd finger which points to the land fraud has heretofore pointed and continues to point to the defendant George B. Parr as a person guilty of fraud against the United States and its revenue.

VIII.

Defendant consents to the Laredo Division, Southern District of Texas, or the Corpus Christi Division, where he will move the Court to transfer said cause to Laredo, as the place for his trial and says again and again that in the interest of justice that the proceeding should be transferred there for trial and all subsequent proceedings.

He prays for such an order.

DATED this 21 day of June, 1955.

Respectfully submitted,

/s/ EVERETT L. LOONEY
Everett L. Looney
1020 Brown Building
Austin, 1, Texas

/s/ THOMAS E. JAMES
Thomas E. James
1302 Capital National
Bank Building
Austin, Texas

/s/ MARVIN K. COLLIE
Marvin K. Collie

/s/ CLYDE L. WILSON, JR.
Clyde L. Wilson, Jr.
Esperson Building
Houston 2, Texas
Attorneys for Defendants

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Everett L. Looney, known to me, who being first duly sworn declared that he prepared the foregoing Motion; that he is familiar with the allegations therein contained; and that all such allegations are true in substance and in fact; that he is an attorney of record for defendant George B. Parr and is authorized to make this affidavit.

EVERETT L. LOONEY
Everett L. Looney

SWORN TO AND SUBSCRIBED before me this 21 day of June, 1955, to certify which witness my official seal and signature.

BIRDIE HOLLAND
Birdie Holland, Notary Public in and for Travis County, Texas

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion has been served upon the United States of America by mailing by registered mail a true copy of same to Malcolm Wilkey, Esquire, Assistant to the Attorney General, Federal Building, Houston, Texas, the attorney in charge of this prosecution.

EVERETT L. LOONEY
Attorney for Defendant

NO. 3866 Cr.

140 AMENDED MOTION FOR TRANSFER OF CASE FROM WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION, TO SOUTHERN DISTRICT OF TEXAS, LAREDO OR CORPUS CHRISTI DIVISION FOR TRIAL

FILED

JUNE 21, 1955

MAXEY HART, Clerk

By

141 EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

United States of America	:	
v.	:	No. 3866 Criminal
George B. Parr	:	

The defendant's motion for supplemental bill of particulars, Paragraph A, subdivisions 1 through 12, inclu-

sive, filed 20 day of June, 1955, the arguments of counsel, and the briefs of the parties having been duly considered by the Court:

IT IS ORDERED by the Court that said motion for supplemental bill of particulars filed by the defendant herein be and the same is hereby overruled.

Thereupon the amended motion of the defendant for transfer of this cause to the Southern District of Texas, Laredo or Corpus Christi Division, for trial, under Rule 21(b) R.C.P., the arguments of counsel and the briefs of the parties thereon, having been duly considered by the Court:

IT IS ORDERED by the Court that said amended motion for transfer of this cause to the Southern District of Texas, Laredo or Corpus Christi Division, be, and the same is hereby, overruled.

Done at Austin, Texas, this 29th day of June, A. D. 1955.

/s/ BEN H. RICE
United States District Judge

ENTERED: Min. Vol. P, page 138

No. 3866 Criminal

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA
v.
GEORGE B. PARR

ORDER OVERRULING MOTION FOR SUPPLEMENTAL BILL OF PARTICULARS UNDER RULE 21(b) R.C.P. and Overruling Amended Motion for Transfer of Cause to Southern District of Texas, Laredo or Corpus Christi Division

FILED
Jun 29 1955
MAXEY HART, Clerk

By_____
Deputy

142 EXHIBIT 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

United States of America :
v. : CR. NO. 3866
George B. Parr :

ORDER ON DEFENDANT'S MOTION FOR SUBPOENA DUCES TECUM

UPON THE AGREEMENT OF THE PARTIES,—

It is ORDERED by the Court:

(1) That in view of the orders this day entered for a Bill of Particulars under Rule 7(f) and for Discovery under Rule 16, it would be premature to at this time grant defendant's Motion for Subpoena Duces Tecum since it may or may not be needed in the preparation for trial.

(2) That defendant's Motion for Subpoena Duces Tecum should and will remain on the motion calendar to await the outcome of defendant's Motion for Bill of Particulars and Discovery this day ordered.

Done at Austin, Texas, this 13 day of June, 1955.

Ben H. Rice
United States District Judge

Agreed to and approved
without objection:

Attorneys for Plaintiff

JAMES T. DOWD
James T. Dowd
Special Assistant to the
Attorney General

MALCOLM R. WILKEY
Malcolm R. Wilkey
Special Assistant to the
Attorney General

RUSSELL B. WINE
Russell B. Wine
United States Attorney

Attorneys for Defendant

EVERETT L. LOONEY
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1020 Brown Building
Austin 1, Texas

MARVIN K. COLLIE
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Houston, Texas

ENTERED: Min. Vol. P, page 83

CR. NO. 3866

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
TEXAS, AUSTIN DIVISION

* * *

UNITED STATES OF AMERICA
vs.
GEORGE B. PARR

* * * *

ORDER ALLOWING DEFENDANT'S
FILING MOTION FOR SUBPOENA
DUCES TECUM UNDER RULE 17(c)

FILED
JUN 13 1955

MAXEY HART, Clerk

By_____
Deputy

144 EXHIBIT 4

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
TEXAS, AUSTIN DIVISION

United States of America :
v. : CR. NO. 3866
George B. Parr :

ORDER TO PRODUCE AND PERMIT INSPECTION UNDER RULE 16

It is ORDERED by the Court:

(1) That in view of the Government's statement to the effect that the Government does not have in its possession any books, papers, documents, transcripts or tangible objects relating to the within cause obtained from or belonging to the defendant, and does not have in its possession any transcripts relating to the within cause obtained from others by seizure or process, the Government is not required to produce and defendant's request for such is hereby denied.

(2) That the Government permit the defendant and his attorneys pursuant to Rule 16, F.R.C.P., to inspect and copy or photograph any and all books, papers, documents, transcripts and tangible objects relating to the within cause and in the possession of the Government which were obtained from others by the Government by seizure or process.

(3) That if the parties shall not have within twenty days from the date of entry of this order agreed upon the time and place and manner of carrying out this order, then either party may apply to the Court for specific directions. It is believed, however, that the parties will be able to readily agree upon the procedure.

Done at Austin, Texas, this 13 day of June, 1955.

Ben H. Rice
United States District Judge

Agreed to and approved without objection:

Attorneys for Plaintiff

JAMES T. DOWD
James T. Dowd
Special Assistant to the Attorney General

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Thomas E. James
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RUSSELL B. WINE
Russell B. Wine
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MALCOLM R. WILKEY
Malcolm R. Wilkey
Special Assistant to the Attorney General

JTD:sep Entered: Min. Vol. P, page 81

CR. NO. 3866

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

* * *

UNITED STATES OF AMERICA
vs.
GEORGE B. PARR

ORDER TO PRODUCE AND PERMIT INSPECTION UNDER RULE 16

FILED
Jun 13, 1955
MAXEY HART, Clerk

By_____
Deputy

145a EXHIBIT 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

United States of America	:	
v.	:	No. 3866 Criminal
George B. Parr	:	

The motion of defendant under Rule 17(c) Federal Rules of Criminal Procedure to fix time for production of objects and documentary evidence, the arguments of counsel and the benefits of the parties, having been duly considered by the court:

IT IS ORDERED by the Court that said motion be, and the same is hereby, overruled in all respects, except that all checks in the government's possession which the government contends were made out to fictitious payees and which were either countersigned or endorsed by the defendant shall be, by the government, produced before the Clerk of this Court at Austin, Texas, for inspection and copying by the defendant and his attorneys not later than the 5th day of August, A. D. 1955.

Done at San Antonio, Texas, this 27th day of July, A. D. 1955.

Ben H. Rice
United States District Judge

ENTERED: Min. Vol. P, page 156

No. 3866 Criminal

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

United States of America :
v. :
George B. Parr :

ORDER ON DEFENDANT'S MOTION UNDER RULE 17(c) FEDERAL RULES OF CRIMINAL PROCEDURE TO FIX TIME FOR PRODUCTION OF OBJECTS AND DOCUMENTARY EVIDENCE

FILED
Jul 27, 1955
MAXEY HART, Clerk

By _____
Deputy

CERTIFIED COPY

UNITED STATES OF AMERICA)
: ss:
WESTERN DISTRICT OF TEXAS)

I, MAXEY HART, Clerk of the United States District Court for the Western District of Texas, do hereby certify that the annexed and foregoing is a true and full copy of the Original AMENDED MOTION FOR TRANSFER OF THIS CASE FROM THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION TO THE SOUTHERN DISTRICT OF TEXAS LAREDO OR CORPUS CHRISTI DIVISION FOR TRIAL; ORDER OVERRULING MOTION FOR SUPPLEMENTAL BILL OF PARTICULARS UNDER RULE 21(b) R.C.P. AND OVERRULING AMENDED MOTION FOR TRANSFER OF CAUSE TO SOUTHERN DISTRICT OF TEXAS, LAREDO OR CORPUS CHRISTI DIVISION; ORDER ALLOWING DEFENDANT'S FILING MOTION FOR SUBPOENA DUCES TECUM UNDER RULE 17(c); ORDER TO PRODUCE AND PERMIT INSPECTION UNDER RULE 16; and ORDER ON DEFENDANT'S MOTION UNDER RULE 17(c) FEDERAL RULES OF CRIMINAL PROCEDURE TO FIX TIME FOR PRODUCTION OF OBJECTS AND DOCUMENTARY EVIDENCE, in cause No. 3866 Criminal (Austin Division), United States of America vs. George B. Parr,

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at San Antonio, Texas this 28th day of June A. D. 1956.

(Seal)

Maxey Hart, Clerk
By Clinton C. Wood,
Deputy Clerk

148 AFFIDAVIT OF MALCOLM R. WILKEY, UNITED STATES ATTORNEY, IN RE WITNESSES TO BE SUBPOENAED AT TRIAL

(Caption Omitted)

(filed, July 9, 1956)

STATE OF TEXAS :
:
COUNTY OF HARRIS :

Before me, the undersigned authority, on this day personally appeared Malcolm R. Wilkey, who, being duly sworn, deposes and says:

My name is Malcolm R. Wilkey, and I am the United States Attorney, Southern District of Texas.

In proof of the nineteen substantive mailing counts and the various overt acts under Count Twenty, the con-

spiracy count, the Government at the present time plans to call at the trial of this case twenty witnesses who reside in Houston, Harris County, Texas. These witnesses include, among others, comptrollers of major oil companies, treasurer of one major oil company, other officials of major oil companies, an independent operator, and a bank officer. None of these, of course, is alleged to have any culpable part in the fraudulent scheme made the subject of the indictment. Their attendance, however, is necessary and will be required like that of any other witnesses.

In addition to these twenty witnesses from Houston who are now known to be necessary to the Government case, it may be determined between now and the time of trial that other witnesses have testimony of value and will be subpoenaed.

/s/ MALCOLM R. WILKEY

Subscribed and sworn to before me this 9th day of July, 1956.

/s/ Lillian Ewing
Notary Public in and for
Harris County, Texas

149 REPORTER'S TRANSCRIPT OF PROCEEDINGS ON JULY 24, 1956

(Caption Omitted)

I, J. L. McAtee, Official Shorthand Reporter for the United States District Court for the Southern District of

Texas, hereby certify that the following is a full, true and complete transcript of my shorthand notes taken upon the hearing above described, had before His Honor, Allen B. Hannay, one of the Judges of said Court, on the 24th day of July, 1956, at Houston, Harris County, Texas, within said District.

Witness my official hand at my office in Houston, Texas, this the 12th day of December, 1957.

J. L. McATEE
J. L. McAtee, Official Shorthand Reporter, United States District Court, Southern District of Texas.

150

APPEARANCES:

Malcolm R. Wilkey, Esq.,
United States Attorney,
Southern District of Texas, and
Edgar O. Bottler, Esq.,
Assistant United States Attorney,
Southern District of Texas, and
James T. Dowd, Esq.,
Assistant United States Attorney,
Southern District of Texas,
Houston, Texas,

For the Government.

Percy Foreman, Esq.,
1116 Capitol Street,
Houston, Texas, and
Gilbert Sharpe, Esq.,
Brownsville, Texas,

For the Defendants

150 PROCEEDINGS

The Court: Cause No. 12,829, the United States of America vs George B. Parr, et al.

I believe we have some motions to consider, a motion to quash and dismiss, a motion for a bill of particulars, a motion for change of venue and transfer proceedings to the Corpus Christi Division of the United States District Court of the Southern District of Texas, and fourth, a motion to product and permit defendants to inspect, copy or photograph documents, papers and objects.

Are both sides ready on the motions?

Mr. Sharpe: We are ready, Your Honor.

Mr. Wilkey: The Government is ready, Your Honor.

The Court: You have the laboring oar, Mr. Sharpe,—

Mr. Sharpe: Yes, sir.

The Court: Or Mr. Foreman.

Mr. Foreman: Mr. Sharpe will be the lawyer. I am just sitting here, Judge.

The Court: You are what is sometimes known, in this particular motion, as atmosphere?

Mr. Foreman: As background, Your Honor.

Mr. Sharpe: Would it be all right, Your Honor—

Mr. Wilkey: May it please the Court, Your Honor will recall that in conference with counsel for both sides, counsel for the defendants and also for the Government stated that we might have oral testimony to offer—in fact it was on request of defendants hat this was made an oral hearing, and I gather from Mr. Sharpe's proceeding to the rostrum that he is prepared to argue the case without presenting any oral evidence. Is that correct?

Mr. Sharpe: Our position, Your Honor, is that we filed about 12 affidavits by the defendants and others in support of our motions. Those affidavits were not controverted by the Government. The Government did file one affidavit in relation to a number of witnesses it anticipated calling, and other facts with relation to the convenience of those witnesses, but I came here this morning on the assumption that we are at no issue of fact on the affidavits filed by the defendants.

Mr. Wilkey: I wish to advise the Court that we have two witnesses who were subpoenaed last week, which the Government will want to offer as oral testimony, and we would be happy to offer them either before or after Mr. Sharpe makes his argument on the motions, which ever the Court prefers.

The Court: Well, I expect that if we have any oral testimony, we had bettter have it before we start in the argument on the law. Don't you think so, Mr. Sharpe?

Mr. Sharpe: Yes, sir, whatever the Court directs.

The Court: Otherwise you would be in the dark as to the facts that are forthcoming.

Mr. Sharpe: All right, sir.

The Court: Then as far as you are concerned, Mr. Sharpe, as far as the facts are concerned, you rely on your twelve affidavits?

Mr. Sharpe: Yes, sir, with this qualification, Your Honor: I, of course, cannot anticipate what the Government witnesses might testify to, and if it develops there is something there that we should rebut, we, of course, would want the opportunity to do so.

The Court: Yes. We will decide on that, or you will, after we have heard the witnesses offered by the Government.

Mr. Sharpe: Yes, sir.

The Court: All witnesses in this case stand up, raise your right hands and be sworn.

(The witnesses were thereupon so sworn by the Clerk.)

Mr. Dowd: Mr. Roach, please.

153 J. W. ROACH,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

153 DIRECT EXAMINATION

Q. (By Mr. Dowd) Will you state your name and where you live, please, sir?

A. My name is J. W. Roach. I live in Alice, Texas.

Q. How long have you lived there, Mr. Roach?

A. Thirty-two years.

Q. What is your occupation, sir?

A. I am employed by the First State Bank of Alice.

Q. What was your employment prior to being employed with the First State Bank of Alice?

A. I was employed by the Texas State Bank of Alice.

Q. Would you kindly state if you would call that the predecessor bank of the bank now in liquidation?

A. Yes, sir.

Q. How long were you with the Texas State Bank of Alice, Mr. Roach?

A. I was with them seven years.

Q. And what did you do prior to working for the Texas State Bank of Alice, immediately prior to it?

A. I worked a few months prior to that for the Frito Company.

Q. What was the type of work that you did for the Frito Company?

A. I was calling on retail merchants, distributing the Frito Company's products.

Q. About how many hours a day did you work?

A. Well, it would run from 12 to 14 hours a day.

Q. And do you recall with whom you spoke or who you contacted about getting a job with the Texas State Bank of Alice, Texas?

A. Yes, Mr. B. F. Donald, Jr.

Q. Also known as Tom Donald?

A. Yes, sir.

Q. And after you spoke with him, you got a job in the bank, is that right, sir?

A. Yes, sir.

Q. And have been working there ever since?

A. Well, for that bank and the present bank.

Q. Mr. Roach, I will show you an affidavit, a document that appears to be an affidavit, and ask you as to what this is. Is this your signature?

A. Yes, that is my signature.

Mr. Dowd: For the record, Your Honor, this is an affidavit filed with the defendants' motions, an affidavit signed by J. W. Roach, dated the 20th day of June, 1956, and it is notarized, by, I believe it is Garza, G-a-r-z-a. I am not too sure of the name.

The Court: What was the date?

Mr. Dowd: June 20, 1956.

The Court: Just read it.

Q. (By Mr. Dowd) Mr. Roach, did you type that affidavit?

A. No, sir, I did not.

Q. Did you give or dictate to anybody the context of that affidavit?

A. No, I did not.

Q. When did you first see the affidavit?

A. The day I signed it.

Q. And where were you when you first saw it?

A. I was at my desk in the First State Bank.

Q. Would you mind reading it, please, sir?

A. "The State of Texas, County of Jim Wells.

Before me, the undersigned authority, on this day personally appeared J. W. Roach, who being duly sworn, deposes and says:

My name is J. W. Roach. I am 55 years of age. I reside at Alice, Texas. I am presently working at the First State Bank of Alice, Texas. For approximately seven years I was employed by the Texas State Bank of Alice. I am familiar with the general operations of that bank and its fiscal records during said period of time. During the period from 1949 to 1953, the above-named bank was depository for the Benavides Independent School District. The principal place of business of said bank was and is Alice, Texas. During said period of time the Benavides Independent School District maintained a number of accounts in said bank, and at times had as many as 14 separate accounts. For each of the above-mentioned years I conservatively estimate that Benavides Independent School District made deposits of at least $350,000, and withdrawals or disbursements were made in approximately the same amount. For each of said years I estimate that at least 2000 separate entries were made in the bank's records in connection with the Benavides Independent School District accounts, including deposit slips, ledger entries, statements and other records. The records of said bank in connection with said accounts of the Benavides Independent School District are located in Alice, Texas.

"Signed: J. W. Roach.

"Sworn to and subscribed before me this the 20th day of June, A. D., 1956, Romeo M. Garza, Notary Public."

Q. Mr. Roach, you first saw this document in the bank in which you are now working on the 20th day of June, 1956?

A. Yes, sir.

Q. You did sign it?

A. Yes.

Q. Mr. Roach, who brought this document to you?

A. Tom Donald.

Q. B. F. Donald, Jr.?

A. Yes, sir.

Q. The same person?

A. Yes, sir.

Q. You didn't word the instrument, is that right, sir?

A. No, sir, I did not.

Q. Did you read it before you signed it?

A. Yes, sir, I read it.

Q. About how much time did you spend reading it?

A. Probably about the same length of time that I used in reading it just now.

Q. Then you signed it?

A. Yes.

Q. At the request of Mr. Donald?

A. He asked me if I could sign it, and I told him I would.

Q. All right. The last sentence says, "The records in said bank in connection with the accounts of the Benavides Independent School District are located at Alice, Texas."

What records are you referring to, Mr. Roach?

A. I am referring to the records that were turned over to the First State Bank when the First State Bank bought out the Texas State Bank.

Q. That last sentence, Mr. Roach, you don't mean to say that all of the records that are or have any connection with the Benavides Independent School District are located in Alice, Texas, do you?

A. No, sir, I wouldn't mean that.

Q. All right. Now, Mr. Roach, was the Texas State Bank of Alice, Texas, a bank that used microfilm?

A. Yes, it did.

Q. Would you explain, sir, how the bank kept a record of its checks, drafts, and so forth?

A. Each day a picture was taken of each check, deposit slip, draft and other items that cleared the bank. This picture was taken on a film which was later sent to the Recordak Company of Houston, Texas, to be developed, and then that film was stored in the bank as a permanent record.

Q. What happened to the canceled checks?

A. The canceled checks were mailed out to the customer with their monthly statements at the end of the month.

Q. Was the bank a single or double posting bank?

A. A single posting bank.

Q. By single posting bank, what do you mean?

A. A single posting, there is only one posting made on the customer's ledger of deposits and debits, and then this ledger sheet is mailed out at the end of the month

as a statement to the customer. The only record retained is the microfilm record of the individual transactions.

Q. Going back to the microfilm records for the canceled checks, are they all down there in that bank, Mr. Roach?

A. I haven't been able to locate them.

Q. Can you recall what years of microfilm are missing from the records of the Texas State Bank?

A. I have searched for the microfilm of the daily run items from sometimes in 1949 through 1953, and have not been able to find them.

Q. Did you take the microfilm, Mr. Roach?

A. I beg your pardon?

Q. Did you take the microfilm?

A. No, I did not.

Q. Do you know what happened to the microfilm?

A. No, sir.

Q. Now, Mr. Roach, do you know what records are in custody of the United States Marshal in Austin, Texas, concerning the Benavides Independent School District, which records came from the Texas State Bank in Alice?

A. I am not familiar with all of the records they have taken. I have seen some of the receipts on file in our bank. As I recall there are some tellers' cash books, and some master tapes from the proof machine, and I am not sure just what other records are included.

Q. But you do have knowledge that certain records are not there, and have been taken out officially, and receipts were given for them?

A. That is correct.

Q. And they are not in Alice, Texas?

A. That's right.

Q. Mr. Roach, do you know that some records in the past, maybe over a year ago, were subpoenaed from the record closet or the record room where the records from the Texas State Bank are kept down there—

A. There were certain records subpoenaed.

Q. By a grand jury?

A. Which grand jury do you mean, Mr. Dowd?

Q. The grand jury sitting here in Houston.

A. Yes, sir.

Q. Did you ever search for any records or help anyone look for any records, in relation to a subpoena?

A. For the grand jury here in Houston?

Q. Yes, sir.

A. I don't believe I helped in that search.

Q. Uh-huh.

A. You mean a bank employee?

Q. Yes.

A. I don't believe I was involved in that search.

Q. Do you know if such search was made in pursuance to a subpoena by any employee?

A. I know an employee brought some records, but I don't know who searched them out.

Q. But you do know an employee took the records out of the bank?

A. Yes, sir.

Mr. Dowd: Pass the witness, Your Honor.

Q. (By Mr. Sharpe) Mr. Roach, The Texas State Bank of Alice is now in liquidation, isn't it?

A. Yes, sir.

Q. How long has it been in liquidation?

A. Since July 19, 1954.

Q. Did I understand you to say that some of the records of the Texas State Bank, when it went into liquidation, were turned over to the First State Bank at Alice?

A. Yes, sir, most of the records were left in our custody, the custody of the First State Bank.

Q. In other words, the Texas State Bank of Alice was the depository for the Benavides Independent School District for a period of seven years or more, was it not?

Mr. Dowd: I believe the best record of that, Your Honor, would be the records themselves.

Mr. Sharpe: Well, you asked him about it.

The Court: If he knows, I will let him answer.

Q. (By Mr. Sharpe) Well, for several years, in any event? You know that of your own knowledge, that the Texas State Bank of Alice was the depository for the Benavides Independent School District, don't you?

A. Yes, that is correct.

Q. And some of those years fell within the period of 1949 to 1953?

A. Yes, sir.

Q. And is it your testimony then that when the Texas State Bank of Alice went into liquidation that the records relating to the accounts of the Benavides Independent

School District which that bank had were turned over to the present bank for which you are working?

A. Yes, sir.

Q. And you do know that at that time there were documents, instruments, writings of various kinds, which reflected the accounts of the Benavides Independent School District with the Texas State Bank, which were turned over to your First State Bank of Alice?

A. Yes, sir.

Q. Now, Alice, of course, is located in Jim Wells County, isn't it?

A. That is correct.

Q. How far is Alice from San Diego, Texas?

A. About ten miles.

Q. The county line runs in between?

A. Yes, sir.

Q. Alice and San Diego, that is the county line of Duval and Jim Wells County?

A. Yes, sir.

Q. Mr. Dowd asked you about the United States Marshal getting some of the records, and he especially said the United States Marshal at Austin, but do you have a recollection, Mr. Roach, of the marshal or some other federal official, coming into your bank there, and actually picking up documents and other papers, purportedly to take them to the federal court or to a grand jury?

A. No, I didn't see a marshal pick them up.

Q. In other words, that would be not within your knowledge directly?

A. The only thing I have seen is the receipt.

Q. I see. And is it now in the possession of some official of your bank?

A. It is in our file there.

Mr. Dowd: Excuse me, but for clarification we are talking about the receipts there?

Mr. Sharpe: Yes.

Mr. Dowd: Thank you.

Q. (By Mr. Sharpe) You don't have that receipt, do you, Mr. Dowd?

Mr. Dowd: It is my witness, Your Honor.

Mr. Sharpe: If he has it, I think he asked about it, and it would be the best evidence of it, if he has got it, and I would like to have it if he has got it.

Mr. Dowd: I have no receipts.

Mr. Sharpe: All right.

Q. (By Mr. Sharpe) In other words, Mr. Roach, what you are testifying to is that there is a receipt listing certain written records left by the United States Marshal or some other federal official with your bank at Alice at the time those records were taken out of the bank at Alice?

A. That is correct.

Q. Can you tell us from your best recollection, or give us your best estimate, as to how many documents or papers are listed in that receipt?

A. No, I couldn't estimate that.

Q. Do you still have some records of the Texas State Bank of Alice which were turned over to your First State Bank of Alice?

A. Yes, sir.

Q. Located in Alice, Jim Wells County, Texas?

A. Yes, sir.

Q. Have you looked to determine if any of those records relate to the account or accounts of the Benavides Independent School District?

A. Yes, I have.

Q. And they are still there?

A. Yes, sir, we have some records there.

Q. All right, sir. As a matter of fact, Mr. Roach, when a bank acts as a depository for a school district, it necessarily makes a number of entries, such as deposit slips, adding machine tapes, journal entries, ledger entries, and possibly a great many others that I have not mentioned, doesn't it?

A. I understood you to say the bank makes those?

Q. Yes.

A. It records the record of them.

Q. Yes.

A. And it clears them through the regular operations of the bank.

Q. Yes. Well, you were with the Texas State Bank of Alice all of the time. Did you, from time to time, do anything, Mr. Roach, in connection with the preparation of the annual report that the depository of a school district makes to the Texas Education Agency?

A. No, I have no connection with that.

Q. That was not within the scope of your duties?

A. No, sir.

Q. With the exception of records that the United States Marshal took from your bank, or with the exception of

records that some other federal official might have taken from it, Mr. Roach, are the other records still at the First State Bank of Alice, which were turned over to it by the Texas State Bank, relating to the Benavides Independent School District?

A. There are a few other records which are not there, which have been used in the State trial.

Q. But with that exception, are they still there?

A. To my knowledge, so far as I know they are.

Mr. Sharpe: We pass the witness.

168 REDIRECT EXAMINATION

Q. (By Mr. Dowd) Mr. Roach, you were asked about the Texas Educational Agency's annual report. Where is that report sent to?

A. That is sent to Austin, Texas.

Q. The bank does not keep the report, does it, sir?

A. No, it is sent in to the Texas Educational Agency.

Q. It is on file at Austin?

A. Yes, sir.

Q. So far as you know?

A. Yes.

The Court: Does the bank keep a carbon copy?

A. I am not sure whether we do or not.

Q. (By Mr. Dowd) Mr. Roach, of the records that you can recall having been subpoenaed out of the bank to a federal grand jury or grand juries, what is your best recollection of whether or not any of those records have ever been brought back to the bank, or whether they have been kept

in custody by the subpoenaing grand jury or the Government?

A. I have—I cannot answer as to whether any of them have been brought back. The receipts are still on file.

Q. No one has ever picked up the receipts for the records that have been taken out of the bank?

A. At least these receipts that are still there apparently were not picked up if records were returned.

Q. Mr. Roach, when was the most recent time that you have made any type of search down there for the records, looked them over to see what was around?

A. Now, which records do you mean, Mr. Dowd?

Q. The general—let's say the Benavides Independent School District records that are yet remaining down in Alice, Texas?

A. I made a search for some of those records, as I recall, the first part of June of this year.

Q. All right, sir. Did you make any other search, sir?

A. Not since then.

Q. Can you tell the Court, Mr. Roach, what records, to the best of your knowledge, are still in the bank that are pertinent to the Benavides Independent School District?

A. Well, we have a microfilm records of the Texas State Bank covering the bank's statements of the Benavides Independent School District, and there are some few records relating to the contract bond, showing the Texas State Bank is the depository of the Benavides Independent School District. Those are the only records that I can recall specifically that refer to the Benavides Independent School District.

Q. Now, the contract bond, of course, is just one piece of paper, is it not?

A. That's right. It includes probably two or three sheets, listing certain bonds that were planted as security.

Q. And the microfilm of the bank statement, about how large is a microfilm, Mr. Roach?

A. It is a 16 millimeter film, and it is a roll probably four or five inches in diameter and a half an inch or so wide.

Q. About how heavy is it?

A. Well, it is not very heavy. Probably, just as a guess, it would take two or three of them to weigh a pound.

Q. And on the microfilm is just one bank statement per month, is that right, per account?

A. There might be more than one picture. Sometimes an account would have so many entries that it couldn't be included in one sheet, so you would have a picture of as many sheets as were involved. Sometimes it will be three or four.

Q. But it would be just one statement per month?

A. Yes, sir.

Q. Twelve a year, for each account?

A. Correct, unless somebody called for a statement in between.

Q. To your knowledge, Mr. Roach, are there any records in the bank down there in Alice, Texas, which reflect the name of the payees of checks, endorsements on the back of checks, or the makers of the checks of the Benavides Independent School District?

A. To my knowledge there are not records of that type.

Q. Nobody could go in and get a record that would show that information?

A. I don't believe it is possible.

Q. And there are no records down there which would so reflect?

A. I have been unable to locate them if there are.

Mr. Dowd: No further questions. Thank you, sir.

171 RECROSS EXAMINATION

Q. (By Mr. Sharpe) Mr. Roach, in connection with those microfilm records that you spoke of, do I understand you to say that that is a film of the monthly statements which were delivered to sent to the Benavides Independent School District as well as of other customers of the bank?

A. Yes, sir, that's right.

Q. In other words, that film would at this time be the original record of the Texas State Bank as to the monthly statement, or if it was sent out at other periods of time other than monthly, for the Benavides Independent School District?

A. Yes, sir.

Q. And you could look at that film and tell the deposits that were made to any particular account?

A. Yes, sir.

Q. In terms of the total amount, and you could look at that statement and determine the amounts of the checks or disbursements from each account?

A. Yes, you could.

Q. And that microfilm covers the period from 1949 to 1954, does it?

A. Yes, sir.

Q. And it contains the statements of every other customer of the bank, does it, besides the Benavides Independent School District?

A. Oh, yes.

Q. Can you estimate for us at this time approximately how many customers the Texas State Bank had during the year of 1953?

A. I couldn't get a very accurate estimate, but I would say it would run between 2000 and 3000.

Q. Now, your affidavit, Mr. Roach, you set out in that that the Benavides Independent School District at times had as many as fourteen separate accounts with the Texas State Bank of Alice?

A. Yes, sir.

Q. Would the microfilm record that you are talking about reflect the statements of each of those separate accounts?

A. Yes, sir, it would.

Q. Mr. Roach, approximately how far is it from Alice, Texas to Houston, by the highway, if you are traveling in a car?

A. The road map shows 235 miles.

Q. 235 miles?

A. Yes, sir.

Q. How far is it from Alice to Corpus Christi?

A. 43 miles.

Q. And you say San Diego is how far from Alice?

A. Ten miles.

Q. In other words, San Diego would be about 245 miles from Houston?

A. If you came through Alice. I don't know whether there is a shorter route or not.

Q. And San Diego then would be about 53 miles from Corpus Christi?

A. Yes, sir.

Mr. Sharpe: We pass the witness.

174 REDIRECT EXAMINATION

Q. (By Mr. Dowd) Just one or two more questions.

Mr. Roach, on the microfilm we are talking about, these monthly statements, when a depositor loses a statement, how can he get a copy?

A. They can have it made up, have a photostatic copy made from the microfilm.

Q. Did you have a photostatic machine in the bank that does that?

A. No, sir. We have to send the film in to the company. We send it here to Houston.

Q. Now, if someone wants to take a picture from the microfilm, they may do that, is that right?

A. Yes, that's right.

Q. And the picture will reflect what is on the film?

A. Yes, sir.

Q. And the picture, of course, can be as large or as small as the person chooses to make it?

A. I am sure that is correct.

Mr. Dowd: No further questions. Thank you, sir.

Mr. Sharpe: Did you pass the witness?

Mr. Dowd: Yes.

Mr. Sharpe: Excuse me. That is all. Thank you, sir.

The Court: Stand aside, Mr. Roach.

(Witness excused.)

The Court: Call your next witness.

Mr. Bottler: Mr. R. W. Milligan.

175 R. W. MILLIGAN,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

175 DIRECT EXAMINATION

Q. (By Mr. Bottler) State your name, sir?

A. R. W. Milligan.

Q. How are you employed?

A. School superintendent, Benavides Independent School District.

Q. How long have you been so employed?

A. Since '38, 1938.

Q. I will hand you an affidavit with the purported signature of R. W. Milligan, which is dated the 20th day of June, A. D., 1956, before Maria Estella Haught, and ask you whether this is your signature?

A. It is.

Q. For the purpose of the record, I will ask you to read into the record the affidavit which has been filed on June 22, 1956, with the Clerk of this Court.

A. "The State of Texas, County of Duval.

"Before me, the undersigned authority, on this day personally appeared R. W. Milligan, who being first duly sworn, deposes and says:

"My name is R. W. Milligan. I am 48 years of age. I am married, and live at Benavides, Texas. I have resided in Duval County, Texas and the vicinity thereof for 23 years. For a period of approximately 23 years I have been employed by the Benavides Independent School District as its school superintendent. I am familiar with the general operations of the Benavides Independent School District and the business thereof, having had occasion to observe the same over a period of approximately 23 years. During the years from 1949 to 1953 the Benavides Independent School District had approximately 65 teachers and other employees working for it. The number of teachers employed varies from time to time but the average approximate number is 65. Checks and vouchers of Benavides Independent School District were issued monthly to pay salaries of its employees. In addition other checks and vouchers were issued in payment of the obligations of the Benavides Independent School District. During the school year of 1949 to 1953 approximately 2000 checks and vouchers were issued each year. The annual report of school funds of the Benavides Independent School District for each of said years contained a list of approximately 2000 checks and vouchers. The records in connection with the above mentioned matters were kept, or are kept, in the office of the Benavides Independent School District, Benavides, Texas. Letters are mailed. Letters or mail sent by or received by the Benavides Independent School District over the years 1949 to 1953 were placed in the U. S. Post Office at Benavides, Duval County,

Texas, and letters or mail received by the Benavides Independent School District in said years were delivered to a box in said post office in Benavides, Texas. I know this to be true of my own knowledge from my work and observation as superintendent and an employee of the Benavides Independent School District for more than 23 years."

Q. And how is that signed?

A. R. W. Milligan.

Q. And did you sign that affidavit?

A. I beg your pardon?

Q. Did you sign that affidavit?

A. I did, yes.

Q. And did you swear to it before a notary public, indicated thereon?

A. I did.

Q. Now, Mr. Milligan, did you type up that affidavit?

A. No, I did not.

Q. Did you dictate it?

A. No, I did not.

Q. Who brought the affidavit to you?

A. O. P. Carrillo.

Q. Does O. P. Carrillo, was he formerly employed by the School District?

A. He was.

Q. In what capacity?

A. Attorney.

Q. Now, who had the custody and control of the records that you have discussed in your affidavit, during the years 1949 through 1953?

A. They were at the School District office.

Q. All right, but who had charge of those records?

A. I believe they were kept in—I believe Oscar Carrillo was the acting secretary, or the secretary. I don't remember which.

Q. Oscar Carrillo, is that correct?

A. Yes.

Q. And he was the secretary or acting secretary of what?

A. Of the School District, the Benavides Independent School District.

Q. All right. Now, where were those records kept?

A. They were kept in the vault.

Q. In what town?

A. In Benavides, in the office. I wouldn't say they were all kept in the vault. They were kept in the offices.

Q. Weren't they kept in San Diego at some time?

A. Well, the district office was, the business office was, in San Diego for a number of years, yes.

Q. Do you know whether the checks were kept in San Diego or Benavides?

A. No, I don't know.

Q. Now, did you prepare those checks yourself?

A. No.

Q. Did you sign those checks during the years in question?

A. I signed checks the latter part of '53 and the first part of '54.

Q. Did you sign all of the checks of the School District in the latter part of '53 and '54, or just those that had to do with the Benavides division?

A. If I remember correctly, I signed all of them.

Q. All right. Now, you didn't sign any checks previous to the latter part of 1953?

A. No, I don't remember signing any before that.

Q. Now, in your affidavit you have discussed checks of the School District, and you have stated the records are kept at the District office in Benavides. Now, I would like for you to please tell us whether or not the general ledger of the Benavides Independent School District is now in the District office of the Benavides Independent School District for the years 1949 through 1953?

A. In referring to the records, I am referring to what I picked up over in San Diego. Now, that is the records I am referring to there.

Q. The records that you picked up at San Diego?

A. That I brought back when they were impounded. They were impounded by the State, and I picked them up and brought them back to Benavides, and that is the ones I am referring to.

Q. All right. Now, what records were those?

A. I picked up the tax records, the tax rolls; I picked up a box of canceled checks; I picked up a minute book, and various loose papers. Now, I don't know what all.

Q. All right. What were the loose papers ?

A. I don't remember exactly. I didn't examine them very closely. I remember we counted the pages and I think it was 101 or 201, or something like that.

Q. And what was on the loose pages?

A. What is that?

Q. These 201 pages, 201 loose pages, what was on them?

A. Well, I don't even remember that. I didn't pay enough attention to it.

Q. All right. When did you pick up these records in San Diego?

A. Well, it was sometime in—sometime—it was either the latter part of February or the early part of March. I don't remember the day now.

Q. Of what year?

A. Of '54.

Q. And what did you do with those records?

A. We took them back to the District office of the Benavides Independent School District, the school office, at Benavides.

Q. All right. You said there were some canceled checks?

A. I think that is right.

Q. Is that correct?

A. Yes.

Q. All right. Did you examine those canceled checks?

A. I didn't, but the auditor did. They counted them.

Q. Well, I am interested in what you did at this time?

A. I remember that I helped them count the number now. Whether I made a specific examination of them, I don't know. I don't remember.

Q. All right. Do you remember looking on those checks and seeing the years for which they were issued?

A. I don't remember doing that even.

Q. All right, sir. Now, how many, approximately how many checks were there in that box that you got in February or March of 1954?

A. Oh, I wouldn't know. I would have to say hundreds. We counted them by statement—we didn't count them by the total number.

Q. All right. Now, you have indicated that there was a total of 8000 checks issued during the years 1949 through 1953.

A. That is an estimate, yes.

Q. You don't actually know how many checks were issued during that time?

A. No, sir, not exactly. I just etsimate there were approximately that many.

Q. All right. Now, there were not 8000 checks in that box you had that you brought back, were there?

A. I just don't know.

Q. Would you say there was 500?

A. I couldn't say, because there were too many different statements. It was 30 or 40 different bank statements which checks in each statement, and we just checked or counted the checks, and I think we put the total up at the top for that one statement.

Q. But you don't know what years those checks were for?

A. Well, prior to '54, yes. I don't know how far back they went though.

Q. Now, to get back to the question, do you know where the general ledger of the Benavides Independent School District is?

A. No, I don't know anything about the ledger.

Q. Do you know where the disbursement journal for the Benavides Independent School District is for the years 1949 through 1953?

A. No, sir.

Q. Do you know where the payrolls of the Benavides Independent School District are?

A. I know where—

Q. For the Benavides Independent School District is, I mean?

A. I think the Federal Government has it.

Q. You don't have it down there in Benavides, do you?

A. No, I sure don't.

Q. Now, do you know where the minutes of the Board of Trustees of the Benavides Independent School District for the years 1949 through 1953 are?

A. I picked up a minute book over at San Diego, but I didn't examine to see what years it was for.

Q. You don't know whether it was for the years '49 through '53, or not?

A. No, I don't.

Q. Just like you don't know whether the canceled checks actually were for the years 1949 to '53 or not?

A. Well, not exactly, no, I wouldn't say that I did.

Q. Now, have you ever made a search for the checks, the voucher checks, for the years 1949 through 1953?

A. I have had no occasion to.

Q. So you actually don't know whether those records are in Benavides or in some place else, do you?

A. I know there is checks there, canceled checks there, prior to '54. Now, I know that.

Q. Now, in the last paragraph of your affidavit you stated that letters were mailed, sent by or from the Benavides Independent School District, during the years 1949 to 1953, and were placed in the United States Post Office at Benavides, Duval County, Texas. Now, as a matter of fact were they placed in the Benavides post office?

A. Read that again.

Q. "Letters or mail sent by or from the Benavides Independent School District during the years 1949 to 1953 were placed in the United States Post Office, Benavides, Duval County, Texas."

Is that an accurate statement?

A. I think it is, yes.

Q. Now, would that be all letters and mail?

A. I wouldn't say all of them.

Q. All right, what part?

A. What do you mean, what part?

Q. Well, you just said—

A. I mailed a lot of Benavides Independent School District mail myself, and I mailed it in Benavides.

Q. Well, as a matter of fact—

A. I would say the majority of it—the greatest percentage of them were mailed in Benavides, after the office was moved back to Benavides.

Q. All right, and when was the office moved back to Benavides?

A. Oh, the early part—around '51—'50 or '51.

Q. Well, as a matter of fact, it was around July of 1951 before the office was moved back to Benavides, wasn't it?

A. If that is the correct date. I don't remember the exact date.

Q. And prior to that time, July of 1951, were a great majority of the mail pieces placed in the box at Benavides?

A. I imagine some of it was mailed in San Diego and some was mailed in Benavides. Now, that is my opinion.

Q. Well,—

A. I mailed mine in Benavides all during those years.

Q. Now, where were the records of the tax assessor and collector kept prior to July, 1951?

A. They were kept in San Diego.

Q. Do you know where they received their mail, or sent their mail from?

A. Not when the office was in San Diego, no.

Q. So you actually don't know where the mail was received or sent from prior to July 19, 1951, with respect to the part of the mail that you did not personally handle?

A. Well, part of it.

Q. And after that time you were only—you can only testify as to your own knowledge as to what was received or sent at Benavides, is that correct?

A. What do you mean, now?

Q. After July, 1951?

A. I wasn't listening.

Q. You only can testify as to what mail you personally sent and received from the post office?

A. I couldn't say for sure about that mail from the District office. I mean I have seen them take it down and mail it.

Q. Well, why did you sign this affidavit? Just because it was presented to you?

A. I read it before—I think I read it in either longhand, and I could see nothing in there that I couldn't sign.

Q. Well, it was not a completely accurate statement that letters or mail sent during the years 1949 through 1953 were sent by the Benavides Independent School District, and that that mail was placed in the post office at Benavides, was it?

A. Well, I think probably over half of the mail might have been mailed from Benavides. I mean that is my opinion now, but I have a lot of mail going out there that has Benavides Independent School District on it.

Q. You didn't have anything to do with the tax assessor-collector of the Benavides Independent School District, did you, at any time?

A. No, I had no connection.

Q. You didn't handle any of its correspondence?

A. No.

Q. You didn't know anything about how that was handled, or who handled it?

A. No.

Q. Or where he mailed it, or where he received it, is that right?

A. No, sir.

The Court: Answer out loud, please.

A. Yes, sir.

Q. Now, you stated in your affidavit that approximately 2000 checks or vouchers were issued each year. Now, could that have been 1900?

A. I am just roughly adding the teachers and employees and multiplying by twelve. Now, that is where I arrived at the approximately 2000.

Q. Now, who had control and supervision of the tax assessor-collector's records in February, 1949, or January, 1949?

A. Who had it in their possession?

Q. Well, who had custody and control of it? Who was the tax assessor-collector?

A. Well, I think Mr. D. C. Chapa was acting as tax collector and assessor.

Q. You say acting as tax assessor and collector. Wasn't he the tax assessor-collector?

A. Well, I wouldn't know—I don't know for sure. I wouldn't say that.

Q. You had been superintendent for 23 years?

A. Actually I was principal the first three—principal and coach the first three years.

Q. All right. Now, who was president of the Board of Trustees in January, 1954?

A. In January, '54, it was Octavio Saenz.

Q. Was Jesus Garza a member of the Board of Directors at that time?

A. In '54, Jesus Garza was.

Q. And Santiago Garcia?

A. That's right.

Q. All right, then D. C. Chapa had custody and control of the tax assessor-collector's records?

A. I understood he did, yes.

Q. All right. Oscar Carrillo was the secretary of the Board of Trustees, and he had custody and control of the records of the School District other than the tax assessor-collector's records, is that right?

A. He was acting secretary or secretary, yes.

Q. Well, he was the man—

A. Yes.

Q. —who had charge of that, is that correct?

A. That's right.

Q. And the school report, the annual school report, sent to the Texas Education Agency, is mailed each year to the Texas Education Agency, is that correct?

A. I wouldn't know.

Q. The original copy is not kept in the Benavides Independent School District, is it?

A. I wouldn't know anything about that.

Q. You don't know anything about the annual school report?

A. Not the annual report, no.

Mr. Bottler: Pass the witness.

Mr. Sharpe: That is all, Mr. Milligan. Thank you.

The Court: Stand aside.

(Witness excused)

The Court: Call your next witness.

Mr. Wilkey: The Government rests on its presentation of evidence on the motions, Your Honor.

May I have just a moment, Your Honor?

The Court: Sure. We will take a short recess, about ten minutes.

(Short recess.)

The Court: All right.

Mr. Sharpe: May it please the Court:

We have furnished to Your Honor original briefs in connection with the four motions filed by the defendants. Yesterday afternoon Mr. Wilkey delivered to Mr. Foreman copies of a reply or supplemental brief, and yesterday afternoon I did the best I could to draw a reply brief in connection with the motion to transfer, and I have already given counsel copies of the original which I am filing here with the Clerk at this time.

If Your Honor please, I believe that our brief in this case has about 79 or 80 pages in it, and the Government's brief has about the same number, and I assure the Court that in my argument here this morning I am not going to attempt to rehash any considerable portion of what is contained in the briefs. However, I do feel that due to the complicated nature of this case, and the length of the indictment, the number of counts in it, and the number of separate paragraphs and subparagraphs in the indictment, that this argument by counsel on both sides might be helpful to the Court in determining the issues.

I would like to do this first: That is to outline this indictment in a general way, not only for the benefit of the Court but for my own benefit in making my argument here on the motion to quash.

This indictment has twenty counts, Your Honor.

The first count in the indictment is the one that attempts to allege the mail fraud charge. It has seventeen paragraphs in it, and it, in turn, is adopted in the succeeding Counts Nos. 2 through 19. The 20th count is the conspiracy count which, in effect, alleges that the defendants conspired to commit the offense or offenses, and I will discuss that later, set out in the first count, and that certain overt acts were engaged in in pursuance to the conspiracy.

Now, in connection with the first count, I want to call Your Honor's attention to the fact that the first 15 paragraphs of it are purely preliminary allegations. The charging part of the first count is found in Paragraphs 14, 15

and 16. In other words, until the indictment gets to Paragraph 14, it does not attempt to allege a scheme to defraud, and then in Paragraphs 15 and 16, the indictment attempts to set out what constituted a portion of the alleged scheme, and in Paragraph 17 it is alleged that a letter was caused to be taken—I emphasize that language, "caused to be taken"—from a post office within the Houston Division of this District.

Now, the substantive count adopts that language in some counts. That is, in order to carry out the scheme a letter was caused to be taken. My best recollection at this time is that four counts involve that allegation, and the remaining 15 counts of the mail fraud charged involve letters which were allegedly caused to be placed by the defendants in an authorized depository for mail in the Houston Division of the Court, so we actually have those two divisions that we are dealing with, where the Government alleges in one instance in four counts that the defendants caused to be taken a letter from the mail in Houston, and the others that the defendants caused to be placed a letter in the mails in the Houston Division of the Court.

Now, I want to briefly touch upon our motion to quash and dismiss this indictment, and I would like to say this at the outset, that this indictment has as many words in it as I have ever seen in a mail fraud indictment, and probably says less—it does say less than most of them that I have ever seen, and as I go along I will demonstate that.

The leading case on this subject was decided by the Supreme Court of the United States in 1888. That was

the United States vs Hess, and that's not something that can be laughed at on account of age, because what the Court said in that case insofar as a scheme or artifice to defraud is concerned, has been the law ever since, and it fits precisely in this case. It is cited in virtually every one of the Federal Reports, every one, from the day it was decided down to this good day. It has been cited with approval by every Circuit Court, and by many District Courts of our Country, and although I haven't checked the last Advance Sheet on the subject, I would be willing to make a friendly wager with somebody that it is cited in the last Advance Sheet.

The point is, Your Honor, this is the established law, and it has been the law ever since. Now, it is true, it has regard to the predecessor of the present mail fraud statute, the old mail fraud statute,—but the point is, Your Honor, that this case established the law, and it has been the law ever since. Now, it is true that it involved the predecessor or first mail fraud statute, the old mail fraud statute which had a requirement not only that there be a scheme to defraud and use of the mails pursuant to it, but the parties had to contemplate the use of the mails. Of course under the amended statute, that element of contemplation of the use of the mails doesn't enter into it, although it does enter into the conspiracy count of the indictment.

Now, in simple language the Hess case said this, and it applies not only to mail fraud indictments, but it applies to every kind of indictment in the Federal Court, that where a statute uses generic language or words, general words, it is not sufficient in the indictment to follow the words of the statute, but that the indictment must go

further and descend to particulars, descend to particulars, and in the Hess case the Court it was found that there was the absence of all particulars.

I would like to make my position clear at the outset on the motion to quash as well as the motion for a bill of particulars. I recognize the rule that the defendants can't get evidentiary matters from the Government as an ordinary proposition. It would be an unusual case which would require that, and in terms of these cases and these holdings, we are seeking not evidentiary matters, primarily, but matters which show the ultimate facts which make up a scheme to defraud, or a representation.

Now, following the Hess case, we have cited in our brief the case of the United States vs Halsey, Stewart & Company, 4 Fed. Sup. 662, and we have pointed out to the Court a rather unusual feature of the reporting in that case. The opinion was actually for the bill of particulars, which the Court granted, and subsequently—the trial Court's opinion doesn't show it—subsequently after the Government filed the bill of particulars, the defendant, or rather the Court quashed the indictment. The Court quashed the indictment, and the Government appealed to the Supreme Court of the United States, and we have given the Court the citation, and the Supreme Court held that it did not have jurisdiction for the reason that the trial Court's action in quashing the indictment was based upon its conception of the pleadings and not upon the construction of the statute upon which it was based. I am sure the Court is familiar with that rule. But the language used in that Halsey, Stewart case, I think, would be very helpful in passing upon the question in this case.

The Halsey-Stewart case involved a complicated scheme of securities and valuable property and various representations which were made, allegedly made by the agents of Halsey, Stewart & Company, and the Court said just this:

"Nor can there be any controversy respecting the necessity of describing, and that means the disclosure of facts" —that is the language of the Court, not mine—"constituting a scheme or artifice."

Now, if we take that language and look at this indictment, and especially the fourteenth paragraph of it, we will find that the fourteenth paragraph of it is almost in statutory language. Almost. There is this little variation: That the paragraph alleges in general terms a scheme or artifice to defraud four different classes of people, or persons, or official persons. The Benavides Independent School District, the taxpayers of that District, the State of Texas, the taxpayers of the State of Texas. Those four. Yet, when the fourteenth paragraph gets down to its final clause, it alleges that the defendants acted to obtain the money and property of the Benavides Independent School District alone. In other words, the thing that I am pointing out is that you have got a double-barreled proposition in the first count of the indictment. One is a scheme or artifice to defraud four different types of persons, and the other to obtain the money and property of just one of them, and I am going to argue that on the question of duplicity a little later.

Then following the Hess case, we have cited to Your Honor five or six additional cases cited over a period of years in which mail fraud indictments were quashed, and some of those cases say every fact necessary to constitute

the crime must be directly and affirmatively alleged, and actually it is not so much a question, as I see it, as to what the law is, but it is a question of application of the law to the facts, and in that connection I want to point out to Your Honor this: That in the first count of this indictment, that is beginning with Paragraph 14, there is an allegation that this scheme or artifice to defraud extended from the 1st day of September, 1949, to the 20th day of February, 1954. That is approximately four and one-half years. It may be four years and five months, but anyway I will refer to it as four and a half years. There are three subdivisions to Paragraph 15, and as I count them, 23 subdivisions of Paragraph 16, and in one place—and in one place only—out of approximately 26 allegations which the Government says is a part of this scheme to defraud, do you find a date. In 25 of these a date is not so much as mentioned, is not even mentioned, and even on the subdivision, which is subdivision (q), in Paragraph 16, the only dates mentioned are those of the annual reports which the depository of every school district in the State of Texas is required to make annually, and the date referred to the report, not what the defendants did at any particular time, and during that four and a half year period of time.

Now, these affidavits that were filed here were primarily for the purpose of our motion for transfer, but they incidentally show that there is a pretty good business involved down there, a pretty large and extensive business, in the operation of the Benavides Independent School District. At least 65 employees that were paid promptly. Approximately 2000 checks or vouchers. These employees were paid monthly, making approximately 2000 checks or vouchers

every year, so that in one subdivision (q), where the Government has named a date, we would have something on the order of 8000 entries alone that these defendants would have to have some information about before they would have the slightest idea of what they are charged with.

Now, there are three subdivisions that I want to emphasize just particularly here to show the Court that they do not fall within the doctrine of the cases that we have cited here for the simple reason that they do not have disparity.

This Halsey, Stewart case, and others we have cited to the Court, hold this in substance: That in alleging representations or false pretenses under a scheme to defraud that you must have this: First of all, ultimate facts making up the representations; secondly, the falsity of the representations, and thirdly, a great many of them hold that the indictment must show why, and in others, this language is used, that the scheme or artifice, if based upon representations, must be disclosed first by such representations, and secondly, in asserted counter failing actualities.

Now, bearing that rule in mind I want to call the Court's attention to this: The three subdivisions of Paragraph 15, which really is the master part of this scheme, if it is alleged at all, are absolutely true statements, absolutely true. The acts in them are legal and proper, and there is not even an implication of wrongdoing in them.

The first one is this: —all through this indictment, Your Honor, the Government has used the abbreviation B-I-S-D: The first one is this: "That BISD checks, also known as vouchers, drawn on the depository bank of the BISD, the

Texas State Bank of Alice, Alice, Texas, were issued to persons and concerns for services and materials furnished to the BISD."

Why of course they were. Any school district has to issue checks and vouchers to persons and concerns for services and for materials, and in a general way—I can't write the indictment for the Government, the grand jury or anybody else—but if I had been writing that I certainly would have set out a representation of some ultimate fact to some person, and I would have said it was false in that on the day or during the period mentioned that no services were furnished, no materials were furnished, they were not of value to these defendants here, and they didn't believe they were of value, and then perhaps have added more language to it to fit these cases, and then we would have had disparity.

I am just using that as an illustration. I believe I can frame a better one than that if given a little more time, but the point is that this master allegation upon which the Government is going to contend lacks disparity. It does not allege in any way, even by conclusion, the counterfailing actuality which the cases require.

The second one is: "That funds of the BISD were disbursed to persons and concerns for services and materials furnished the BISD."

Why, certainly they were. Any school district would do that. It is a perfectly true statement, and the only way that it is tied in with their scheme is by a little lead sentence that says that it was false and the defendants knew

it was false, without any reason or conclusion whatsoever as to why it was false.

Then they go down to: "That the Annual Report of School Funds of the BISD, showing the financial affairs of the BISD as required by Article 301 of the Texas Penal Code, contained a true and correct statement of the receipts and disbursements of the school funds of the BISD."

Well, any school district has to do that, so taking those at face value we have true statements, no disparity, no reasons why they were false and fraudulent.

Now, the next paragraph, Paragraph 16, is worded differently. It is not worded in terms of the defendants making flat assertions or fraudulent statements, but in terms of what the defendants would do in terms of future action as a part of this scheme.

Now, we have cited the Court one case in which that very question is passed upon, and the Court said that the indictment, instead of setting out the nature of the representations and what was done—I quote the words of the statute—"state not the scheme, but what the defendant and others did," and that Court holds that that is not sufficient to allege a fraudulent representation. I don't see any difference between a case where they allege something was done, and this, where they allege they did something.

All in all, on the first point on the motion to quash and dismiss the indictment it just narrows down to the question of applying the law to the facts and I want to add this one statement that all of these cases hold that a person

indicted for a serious offense is presumably innocent and the sufficiency of an indictment must be tested upon the presumption that he is innocent and has no knowledge of the facts charged against him. Instead of charging the defendants as the Government has done in their brief here with making a complete and full investigation of thousands of entries, the law says that the ultimate facts must be given in the indictment sufficient first of all to put him on notice to where he won't be surprised and he can prepare his defense and, secondly, that it would protect him from a double jeopardy on subsequent prosecution.

Now in connection with our motion for a bill of particulars, Your Honor, the Halsey, Stewart case that I have cited, Your Honor, is the leading case on the subject, and in that case there is an extended discussion of the difference between inferences from language used in the indictment and statements of facts. And the Court, among other things, points out that if the indictment is sufficient to start with it will meet the test as against a demurrer. Still you have the question of the range and the character of the proof with which the defendants may be confronted. But the best opinion on this whole subject of bills of particulars, in my thinking, is one by Judge Medina when he was a District Judge. It is reported in 82 Fed. Sup. 449, decided in 1949, and he has a very enlightening discussion of the difficulties faced by Federal Judges in passing upon this type of motion. Among other things he pointed out at that time, since the rules had only been in effect for three years that part of the difficulty was that we hadn't just developed the philosophy underlying the rules, but he goes on to do this: He points out that it is unreasonable to require defendants in that case to interview

hundreds and perhaps thousands of miscellaneous employees of the defendants involved when perhaps a dozen or so in the case of a single corporate defendant would suffice. And then since the Government had resisted the motion in that case, he said this: "I cannot perceive the fairness of withholding such charges from defendants until the trial on the ground that there would be sufficient time after the Government introduces the witness to investigate the matter and adduce the necessary explanation or refutation."

Then he goes on to do this—this was a case involving the Sherman Act and price fixing and alleged agreement in restraint of trade, and he said this, just to point out the particulars that are similar to the ones in our case here—he said this: "I shall direct that at least 30 days before the trial there shall be furnished to the defendants claimed to have participated in the alleged acts a statement identifying each separate occasion relied on with sufficient detail fairly to apprise defendants of the transactions to be proved." And he points out what that was, refusal by producers to sell to finders and wholesalers, refusals by wholesalers to sell to finders, refusals by finders to sell to any person not approved by the association; refusal to accept persons as members of the association, and so forth. In that case he required, where he felt that the indictment was really insufficient to put the defendants on notice, that the Government furnish statements.

Another case which is very helpful that we have cited the Court was decided in 1934, the opinion by—I don't have the Judge's name here—United States vs Graves, Eastern District of New York in 1934, and in that case the Court says this, that he had a blanket charge there—

that's the language of the opinion—as to a most complex and extensive series of transactions covering a considerable time and made by large and very active corporations. Now, we certainly have that in this case. We have four and a half years involved in it; we have eleven defendants, two of them which are banks, and we have thousands and thousands of transactions involved not only in the School District records but in bank entries. Then the Graves case was cited in a subsequent case by the same District Court which referred to the scheme alleged in that case as a "tangled web, not easily unraveled."

Well, an examination of this indictment and especially the first count of it I think will lead to the conclusion that that description probably fits; a tangled web not easily unraveled.

Then the Courts in these other cases that we have cited here, especially United States vs National Title Guaranty Company in 12 Fed. Sup. 473, by the Eastern District of New York in 1935, points out that the Court had there an indictment framed in general phrase. General phrase. That term is used. And goes on to say that the defendant should not be compelled to speculate in respect to the material averments of the crime with which they are charged.

This it would seem possible to do without restricting the Government unduly in the prosecution of the case and there the Court in granting a bill of particulars—and we set the substance of it out in our brief—requires the Government to state the substance of telephone conversations and representations made by salemen and agents

of the defendants. Whether the representations were written or oral. Copies of the letters involved in 24 counts of the indictment; the dates upon which the defendants conspired—and it's either this case or the next one—the dates upon which the defendants entered the conspiracy or left it.

Now, one case which is material on this point of just how much work and labor the defendants are required to do in preparing for a case like this, is United States vs Dolan, 113 Fed. Sup. 757, decided in 1953 by Judge Henks, District Judge of the District Court of Connecticut.

In that case an income—that case involved an income tax evasion indictment for the years 1946, '48 and '49. And all the indictment did was just to give the difference between what the defendant actually made and what he paid and what the Government said his income was and what he should have paid.

Judge Henks said thus in granting the bill of particulars:

"The bill is based on a claim that the specifications sought are necessary to the preparation of the defense and to protect against surprise."

He went on to say that where you have got a case with thousands of dollars and entries involved that the Government should specify, especially if it relies solely upon one or more specific entries, what those entries are and this is his language, replying to the defendants:

"Without expending the labor which would be necessary to present evidence as to entries which the Government will not challenge."

In other words, in that case the Court says within a reasonable range if the Government relies on some or a few or a certain class of entries, then the defendant ought not to have to go to the work of looking at thousands of others, which are inferentially alleged in the indictment, to prepare his defense.

That case and that opinion by Judge Henks is cited with approval in United States vs Carr, decided in 1954 in an opinion by Judge Bruckhausen, Eastern District of New York, in 17 Fed. Rules Decision 242, where he says this, "That the purpose of a bill of particulars"—I know this particular statement is not especially relished by prosecutors, I wouldn't have liked it when I was prosecuting, but at the same time it is the law—"another purpose is to save the defendant needless labor in preparing his case." Now the Courts have held that. And in that case the Court granted a bill to this effect: "If the Government claims fraud based upon omissions from the tax returns of data which the defendants are legally bound to report, the omission should be identified." And then again, "If the Government relies for its proof of fraud solely upon one or more basic or specific entries in the defendant's income tax return he should identify those entries."

Now, there are other cases in connection with our motion for a bill of particular which I have set out, and it seems to me, Your Honor, you would know much

better than I would that since the advent of the Rules of Criminal Procedure we possibly have had a trend toward greater liberality in the granting of these bills. The courts since 1946 seem to have taken the view there that if there really is a serious question about whether the defendants are fully apprised or not, that the Court ought to do the best it can in granting the motion, to where that element of surprise will be eliminated.

Now, Your Honor, I come to one point here which runs through our motion in about three different places. We've asked for this information with bill of particulars; we've asked for it on our motion for discovery, at least in those two places, and that is this:

We have eleven defendants in this case. All of them are alleged with directly doing the acts in this case. I think an examination of the indictment will show that it is physically impossible for all of them to have done some of these acts. But, nevertheless, we have asked in our bill of particulars that the Government first do this, to state if any of the defendants are being prosecuted as principals under Section 2 of the United States Code. And, if they are being prosecuted as principals under that theory, to state whether they aided, abetted, encouraged, counseled, commanded, and so forth, in the words of the statute, the offense or the commission of the act, and the ultimate facts relating to that type of conduct. Now, we have some authority for that position in the case of United States vs Lieberman, decided by the United States District Court for the Southern District of New York in 1953, reported in 15 Fed. Rules Decision 278. In that case Lieberman was indicted for having unlawfully smug-

gled certain merchandise into the United States. The Court points out this, "Lieberman's problem arises from the rule that whoever commits an offense against the United States or aids, abets, counsels, and so forth, in the commission or causes it to be done is a principal. The statement in the indictment is that Lieberman did knowingly and wilfully smuggle, and so forth, into the United States diamonds, would permit proof that Lieberman aided, abetted, counseled, commanded, induced, procured or caused the diamonds to be smuggled and introduced." And the Court in that case said that it was entirely proper for a bill of particulars to be granted on this basis—and this is the Court's language—"I direct therefore that the Government state whether Defendant Lieberman introduced the diamonds into the United States personally, or aided, abetted, counseled, commanded, induced, procured, or caused such introduction, and if Lieberman performed any of the latter acts, which one or ones he performed and the means by which it or they were performed."

Now we say that case is authority, and we have some others which we have cited on the motion to quash as well as in this case, that where the defendant is charged with causing something to be done—and that's the most you can get out of these allegations here, that the letters involved were caused to be taken from the mails or caused to be placed in the mails—that the name of the person or the agency through which this was brought about should be named or described, or that the grand jury should allege that the names are unknown. So we say in this case here that the Government is bound to know what its proof is going to be. It's assumed that it had competent evidence before the grand jury—we haven't ques-

tioned that—to sustain this indictment. They know, for example, if there is a Benavides Independent School District check that was given to a fictitious person or was given for services and materials which really weren't furnished, they know which person or persons did that and they know which person aided, abetted, counseled and commanded that, and we say that under this theory they ought to give us the benefit of that information.

Now, I am talking about the substantive counts, not the conspiracy count at this time, because I want to discuss it later.

So we have that theory too and we have asked for that particular on each one of the allegations of the indictment where it could be construed that the defendants might have acted as principals in connection with that particular matter.

If your Honor please, I pass now to our motion for transfer of this case to the Corpus Christi Division of this Court. I'd like to point out the state of the record in that respect. We have filed in this case I believe twelve affidavits. Three of them are by individuals who are not defendants and when the Court looks at these, in consideration of the authorities on the matter, I believe that the Court should conclude that the law fits our facts in this case, and the reason I say that is that I don't want to be in the position here of having put facts in these affidavits or have submitted them here which more or less fit the law. It's the other way around. I assisted in the general form of these affidavits but I didn't know the facts at the time; some other people had to swear to those. those

that knew them, but in substance each of these affidavits show this: That these people live in Duval County, Texas, with one exception. Mr. Donald lives in Jim Wells County, which is either 10 or 12 miles from San Diego, and to that extent our motion is in error and I'm going to ask the Court to grant me leave to correct that. He lives 10 miles there out of Duval County, Texas, over in Jim Wells County, Texas.

They all live there; their homes are there; their families are there; their businesses are there. Each of these affidavits set out the basic facts as to these people and their occupations. One of them is a filling station operator and the other one is the local agent for the Tex-Mex Railroad. Some of them are not rich people by a long shot and that question of expense of a trial at a distant place from their homes enters into the discussion of almost all of these cases under Rule 21-B of the Federal Rules of Criminal Procedure.

Now, if Your Honor please, it is our position under the cases that this is the showing the defendants must make under Rule 21-B. It provides in substance that if an offense was or is triable or can be prosecuted or was committed in two or more Districts or Divisions—it uses both of them, Districts or Divisions—on motion of the defendant if the Court is convinced that it is in the interest of justice the motion may be sustained and the case transferred. So we have both of these requirements, the motion of the defendants that the crime was committed in either of two Divisions, and our case here could be tried in either Division, and that the transfer would be in the interest of justice.

Now, of course I didn't write the Government's brief in this case. I wrote my own. But I was somewhat surprised that they did not cite to the Court the leading case on this subject which is United States vs National City Lines by Judge Yankwich decided in 1947, 7 Fed. Rules Decision 393. That case has been cited in almost every case that has been decided since then. Of course the Federal Rules of Civil Procedure had not been in effect but one year at that time. We have set out excerpts from Judge Yankwich opinion in our brief and he points out the background of the development of this rule and especially he points out that as far back as in 1905 our Supreme Court lamented the fact that only the Government had the choice of the place of prosecution. In a District or Division where it was committed there was nothing that the defendant could do unless he could get in on the grounds of prejudice or some kind to have the case transferred and we've set out an excerpt from the Supreme Court's opinion in 1905 which indicated that something ought to be done about the serious hardship that was being caused to many defendants having to go long distances from their home, to employ counsel at a distance, to bring their witnesses, leave their families and everything that was near and dear to them, in order to convenience the Government as to place of trial.

Now, Judge Yankwich not only quotes from the Supreme Court's opinion but he quotes from some pretty good Federal Judges who have looked into this thing. Judge M-e-d-a-l-i-e — I don't know whether that's "Medally" or "Medalev" — of the Court of Appeals of New York who in a talk at an institute on the Federal Rules of Criminal Procedure discussed the practice that

I am talking about of the Government selecting the place of prosecution, and Judge Medalie says this: "Now that is pretty shabby business for the great Government of the United States to indulge in. It ought not to be done." Then he comes down to discussing this new Rule 21-B. So we have another change of venue rule that if it appears from the indictment or the bill of particulars—and that's important, Your Honor, it can appear from either one or both of them. It doesn't have to appear from the indictment that the offense is triable in two Divisions or two Districts if the fact is that way and the bill of particulars show it to be true—that the crime has been committed, or claimed to have been committed, in more than one District the Judge in the District where the indictment has been found can order—and I'm sure that judges are fair and not looking for these extra jobs, and I think he was kidding there—the trial in the District where it is most convenient that the case be tried.

Then he points out an example where defendants and their books and records, and their homes were located in Chicago and they might be taken somewhere else, to some other place in the country for trial. He said this, that the decent thing to do and it accords better with the dignity of our great Government that it be done that way rather than the shabby devices indulged in where we lose our status and our self respect. Government attorneys cannot, if they appraise themselves properly, afford to engage in that kind of thing and perhaps it would diminish the abuse if in fact it doesn't succeed in its complete abolition. And what he was talking about was this business of shopping around for a favorable place for trial.

Now he goes on and sets out a formula which has been—

The Court: Right in that connection, a point that sort of gives me a little concern, I believe there has been, you might say, a companion case, which had—

Mr. Sharpe: Yes, sir.

The Court: —various travelogues—

Mr. Sharpe: Yes, sir.

The Court: —or is quite a travelogue.

Mr. Sharpe: Yes, sir.

The Court: And in some of that, I understand this is not in the record, but there have been various claims of intense prejudice, particularly caused by newspaper articles in the local papers?

Mr. Sharpe: Yes, sir.

The Court: Are you going to meet that head-on, or skirt around it?

Mr. Sharpe: I am going to get to it, Your Honor. I would say I am about five minutes away from it.

The Court: About five minutes away from it?

Mr. Sharpe: Yes, sir.

The Court: All right.

Mr. Sharpe: I am going to get to it.

The Court: All right. I am impressed with one question, and I guess you will get to it in several minutes, and that is the question of whether the crime involves

intent, where the intent was formed do you think should have priority?

Mr. Sharpe: Yes, sir.

The Court: And you expect to cover that?

Mr. Sharpe: Yes, sir.

The Court: Go ahead.

Mr. Sharpe: I appreciate it, Your Honor.

The Court: I don't want to move your timetable up. Go ahead.

Mr. Sharpe: Thank you. I do want to point out this, that in our brief at Page 49 we have quoted the formula that Judge Yankwich said makes up the interest of justice. Now several courts have discussed that term and we cited them in the brief but they are not in substantial disagreement in any respect with this formula. He has eight elements, I honestly thing that two of them are more or less conclusions, and six of them probably go to the factual basis of it, but he says when a Court is faced with the proposition of a motion to transfer from one District to another or one Division to another, that this should be the test, he says, "We have here a prosecution which would compel the chief defendants, one, to go to a place distant from the location of their business; two, to employ or bring counsel to a distant setting; three, to bring witnesses from afar"—and I really think that's one of the most important features—"four, their business headquarters are in another city; five, most of the records which relate to the transaction on which the indictment is based are there. Under the circumstances"—and this is one of the conclusions—"fairness would be absent, and eight,

the defendants would be put to unjustifiable expense"—which of course is a factual conclusion—"if we deprive the United States District Court for the Northern District of Illinois"—in that case—"of its rightful jurisdiction"—which of course is another conclusion. His comments there on fairness being absent and depriving another district or division of its rightful jurisdiction are conclusions of law which he puts in that formula with fixed facts element.

Now we have two mail fraud cases, Your Honor, cited in our brief which fall within that doctrine. First of all, all the defendants here have moved for transfer. So I want to discuss that proposition of where the offense was committed. If it is committed or has been committed in both the Houston and Corpus Christi Divisions then we comply with the rule. In that connection, the Government in response to our motion for a bill of particulars has agreed to let us look at the basic letters. That's all they agreed to let us do was to look at the basic letters involved in these indictmnet counts, and they should show the place of mailing and the place of delivery, and I am arguing this on the assumption—which hasn't been disputed, as a matter of fact it's admitted in the Government's brief—that where we have a mailing in the Houston Division of a letter it went to Duval County, Texas, and where we've got a taking of a letter in the Houston Division it was mailed from the Corpus Christi Division of the Court.

Now, we have two cases, United States vs White, a mail fraud case, in which transfer was granted on that very proposition from one district to another—I'll say

in this connection, Your Honor, I have not found a single case involving a transfer from a Division of the same District to another. These cases were all transferred from one Judicial District to another.

The White case granted the transfer there, and incidentally pointed out on this issue of justice that the Government contended it was going to incur some added expense by going to the State of Oklahoma, to which the case was transferred, but the Court said it would be inconsiderable and the defendants were entitled to transfer anyway and that one factor alone as to whether it cost the Government a little money or inconvenience wouldn't be determining. And we cited the case of the United States vs Erie Basin Metal Products Company, 1948, 79 Fed. Sup. 880, which had this unusual fact situation that six businesses were involved and only four of them moved for a transfer to the State of Illinois. The suit was brought in Maryland. The motion was for transfer on the part of four defendants from the Judicial District of Maryland to the District of Illinois.

That left two defendants before the trial court, the original court of jurisdiction and the Court in discussing said it didn't make any difference that those two defendants hadn't moved for transfer and the Court couldn't grant it for that reason. The Government complained that it was put in the position of trying that case twice and of duplicating the testimony of the witnesses in both of those cases, and the Court said nevertheless the defendants were entitled to it and if the Government had to try it twice, it would have to try it twice because the defendants had made the proper showing. Those are two cases directly

in point on the question of mail fraud violations, mailing and reception of mail between two different districts, and on the question of expense to the Government.

The Holsworth case is another one.

Your Honor, I am incorrect about the Erie Basin case being a mail fraud case. It was under the Renegotiation Act of 1942. The other mail fraud case we have cited to the Court is the case of Holsworth vs United States, 179 Fed. 2d 933, decision of 1950.

Now, one rather unusual feature of Rule 21-B is that a number of the District Courts have disagreed. For example, in the Holsworth case the Judge in the District of Maine disagreed with the one in Massachusetts who had transferred the case to him, and retransferred it. Transferred it back. And we've got another set of cases involved in our reply brief this morning where that happened in the State of Tennessee, but I believe that the Holsworth cases and the other case, United States vs United States District Court, pretty well settled the matter.

Now in the Holsworth case 26 letters were involved. Thirteen of them had been mailed from Massachusetts to Maine and thirteen of them had been mailed from Maine to Massachusetts. In deciding the case the Circuit Court upheld the original transfer and said that the Judge to whom the case had been transferred in the other District, under the conditions, should have accepted, but the Holsworth case cites a number of cases, especially Hagner vs United States by our Supreme Court, which goes into this proposition that mailing a letter in pursuance to an al-

legedly false or fraudulent scream—scheme is a continuing offense. In other words, where it's mailed in one place it started and continues through to the delivery and the Court in that case just says this, citing the Hagner case: "It seems to hold authoritatively that other elements of the crime being proved to be present, proof of mailing a letter in the post office in one district, properly addressed to a person in another district, alleges a crime which may be tried in either district, it being a crime part of which is committed in one district and part of which is committed in another, Rule 21-B is applicable. The question of which district is the more appropriate place for trial is then a matter for the discretion of the judge before whom the motion to transfer is made."

Your Honor, I think I used a little bit more than my five minutes getting to this other point but I'm going to get to it now.

First of all we must bear in mind we have eleven defendants involved in this case. We don't have just one. We have George B. Parr, eight individual defendants, and two corporate defendants. I don't know of anything that's happened before that would prejudice the rights of those individual defendants or the two corporate bank defendants. Furthermore, this is a mail fraud prosecution; the other was an income tax prosecution, but most important of all Judge Kennerly's opinion, which is cited in the Government's brief, as well as in ours too, I think in 17 Fed. Rules Decision, makes this point abundantly clear: That whatever happened at Corpus Christi when that motion was filed, and it was filed by other counsel, as the court knows, it was made clear that the defendant moved

for a transfer on the basis that he could not get a trial, a fair trial, at that time, in that case, in Corpus Christi and he consented to its transfer to the Laredo Division, which Judge Kennerly upheld in his opinion.

Afterwards the Government dismissed the case and Parr was reindicted.

Judge Kennerly in that case very carefully points out that Parr took this position in that case, that if it should not be transferred to the Laredo Division he preferred for it to stay right there in Corpus Christi. So it's a question of degree, I suppose, as to choice of Divisions, but the Government cannot make any point on that case that Parr has ever consented to trial in the Houston or the Victoria, or the other Divisions, and Judge Kennerly points out that he didn't even have sufficient information to pass on those questions. So it amounts to this, that insofar as he can consent to it, Parr consented to a trial of that other case in Laredo and secondly in Corpus Christi. Which I don't think should prejudice him in this case, if he has anything to say about it at all.

Now, in conclusion on this point of the motion to transfer we have asked the Government to give us a bill of particulars, in addition to the documents, as to the place where the various letters involved were mailed. We think we are entitled to that regardless, Your Honor, on the merits of the case and in connection with this motion to transfer and we believe it will be shown that we are correct in our statement as to the mailing in Houston, delivery in Corpus Christi Division, and vice versa, and the Government has conceded that, as I say, in their brief. They haven't disputed that at all. So we have, as we see

it, all three of the elements complied with: Motion by the defendants; an offense which can be tried or prosecuted in either the Houston or the Corpus Christi Divisions, and we say under these affidavits which have not been controverted, Your Honor—none of our affidavits were controverted on the residence or the expense or the number of witnesses, and so forth—that we have met the formula interests of justice set down by the cases.

Now, Your Honor, in connection with the—

The Court: Well, on that point would Mr. Foreman desire to tell me whether or not he thought that these eleven defendants could get a fair trial in Corpus Christi?

Mr. Foreman: Yes, Your Honor, the defendants, I think they could get a fair trial in Corpus Christi, and I think at this time Defendant Parr could likewise, who is only one-eleventh of the defendants, could get a fair trial in the Corpus Christi Division.

The Court: You don't think there is prejudice against you down there?

Mr. Foreman: Oh, I think my adversary in that case won't be on the jury, Your Honor.

The Court: I see.

Mr. Foreman: All right, and, may it please the Court, I am not trying to promote the time given—

The Court: I haven't specified any time.

Mr. Foreman: But as to the Defendant Parr, if I understand the evidence as it will be in this case, it will be such that he will be disposed of by the Court without a jury anyhow, and therefore that might be out of the case.

The Court: It sounds optimistic, doesn't it?

Mr. Foreman: Well, I say it sincerely, Your Honor.

The Court: I am sure you do.

Mr. Sharpe: If Your Honor please, the final motion is the motion to produce and permit the inspection of certain documents, papers, and so forth. Now the Government has done this, they have come in and said insofar as the letters basically involved in the first 20 counts, they'll give those to us, although we haven't seen them yet. And then they say that they will give them to us on three or four or five of the overt acts involved in the conspiracy count. That's all right as far as it goes. But we say that our motion, not only for bill of particulars but for discovery should cause the Court—

The Court: In that connection, no one has raised it, but in an investigation of a matter that I spoke on before the Bar Association out of the state some years ago, I ran into a case of which I have a notation, by Judge Miller over in Arkansas, in which they had quite a number of letters, and I was wondering somewhere down the line if you all couldn't get together and agree on the mailing of them and all of that sort of stuff, without wasting these defendants', lawyers' working by the hour, and the Court's time. It will save a lot of time.

Mr. Sharpe: Yes, sir, that is satisfactory with us, Your Honor.

The Court: I will dig up Judge Miller's decision on the Arkansas Court.

Mr. Sharpe: Yes, sir. I am going to take just a minute.

The Court: That was on a pretrial, which is unusual in criminal cases.

Mr. Sharpe: Is that a reported decision, Your Honor?

The Court: Yes, sir.

Mr. Sharpe: I believe I missed that one. I don't recognize it by the name.

If Your Honor please, in connection with our request for discovery and inspection of documents, the Government has just gone part of the way. For example, the Court can look at the basic allegations in Paragraphs 15 and 16 involving checks to persons and services—to persons for services and materials, checks to fictitious persons, tax receipts, correspondence concerning taxes, tax renditions, checks in payment of taxes, and down here, forged endorsements on such fraudulent checks where necessary, opening accounts in banks other than the authorized depository, cash taxpayers' checks payable to the Benavides Independent School District and convert the proceeds of such checks to their own use, and so forth. A period of four and a half years, Your Honor, without a name or a date or a word of description of what they are talking about. I don't believe there is any defendant anywhere that could prepare for trial on the basis of those allegations, and we say this: That where they have instruments involved such as checks, fictitious, or payable to fictitious persons or where they have been falsified or forged, and so forth, fairness requires that we know that in advance so that we don't have to wait here until that's offered in evidence and then to go out and make an investigation on it. We say that these cases support us in that view.

Now the difference between the Government and our position on Rules 16 and 17 is this—in that connection I'd like to point this out, Your Honor. Rule 16 of course is the basic discovery rule, where the defendant gets a right to look at books, records and documents, and so forth. Rule 17 is the procedural method providing for a subpoena to where he can get those in court if he wants to use them. Now, I haven't made, I haven't gotten out a subpoena duces tecum and served it on the United States Attorney here for two reasons, and that is two cases which hold that that kind of a subpoena is premature until the Court has acted on the motion to quash and for a bill of particulars and for discovery. In other words, we can't subpoena something that hasn't been discovered. But, I want to point this out, that under the Bowman Dairy Company case, which Your Honor is familiar with, and United States vs Ragan, and others, the courts, since the effective date of the Federal Rules of Criminal Procedure, have granted a great many of these motions and as I see it Rule 16 and Rule 17 have to be construed together. The Government seems to take the position here that because we haven't filed a subpoena duces tecum under Rule 17-C that we are not entitled to discovery, for example, of documents which they have obtained voluntarily from third persons and we say this: They are willing to let us look, they say, if the documents and the instruments and the objects which the Government has seized by process, or subpoenaed. But they have other documents, records, that they have gotten by voluntary consent of the persons who had them, that they don't want us to look at. Now we have cited—until the trial—we cited a number of cases here which hold that we are entitled to see those. Now in connection with not only

our motion for bill of discovery but for particulars, there is one other feature that I have not mentioned to the Court and after I have discussed it I'll be through. It is very important. That is this:

The first 19 counts of this indictment do not mention two people who are mentioned in the 20th count. Those two people in the 20th count who are alleged to be co-conspirators but not indicted, they are not defendants in this case. A man by the name of Diego Heras, H-e-r-a-s, and Mrs. Jewell Mayfield. Now then, it's obvious to us that there is some reason for that. In other words, the indictment says these defendants, these people rather, are not defendants, they are co-conspirators, legally in effect they are just as guilty as the others but we are not going to prosecute them. Well, that leads me to—

The Court: You suspect immunity, do you?

Mr. Sharpe: Yes, sir, that leads me to the conclusion which I think is pretty obvious, that those people have gotten some kind of promise of immunity, they have an interest in giving testimony, and whatever they have given to the Government in the way of statements or oral testimony which has been reduced to writing, aside from the work product of the United States Attorney—I agree that these cases hold we can't get that—but where in effect you have a written or signed statement given, and that includes an oral statement that has been reduced to writing, we say that we are entitled to get it.

I have cited the Court two cases, one opinion by Judge Laws in United States vs Bell, 1955, 126 Fed. Sup. 615, in which he granted the motion to inspect a statement

to two police officers in the District of Columbia case. He held that portions of the statement were hearsay and therefore not admissible, but he said this: "The Government will permit defendants to inspect the statements of Officer Jefferson and the last two paragraphs of the statements of Detective Southcomb."

In the other case, about which the Government has much discussion in its brief, is Gordon vs United States, 344 United States 414, in which this happened: The defendant—not the defendant, but a witness was called by the Government against two defendants who were being prosecuted in a separate proceeding. The witness' name was Marshall. He had already been convicted in a separate case of the offense of unlawful possession and transportation of stolen goods, in interstate commerce apparently. Marshall took the stand and there he testified against these two men, Gordon and McCloud, and in the course of his examination it developed that he had made written statements to the Government on several different occasions and that they were in part contradictory. At least he had not implicated either of the two defendants then on trial. The trial court wouldn't let the counsel for defendants see the statements and the Supreme Court reversed, holding that the statements should have been furnished.

Now, there are a number of cases, Your Honor, from the District of Columbia, and possibly other districts, in which it is a matter of common practice for the Court, on the proper showing, where the Government says, "Now, we are going to put so-and-so on as a witness and he has given a written signed statement about this matter," for the Court to allow the defendant's counsel to look at

it at some stage of the proceedings. The difference seems to be usually the time at which they can see it. Some Courts wait until the witness gets on the stand and then for the first time lets counsel for defendants see it, which we say creates a hardship, and others let the statement be examined in advance.

Now, in connection with the point that I am making on Diego Heras and Mrs. Mayfield we are faced with this situation, that if we don't get their statements, or all statements which have been reduced to writing, prior to the trial of this case we are down to the point where we undoubtedly will be surprised by anything that they testify to between now and then. And here again I want to call the Court's attention to these cases which hold that the defendants, including Mr. Parr, are entitled to the Constitutional presumption of innocence and that he does not have the knowledge, he does not have the knowledge of the facts which are involved in the indictment. Instead of requiring the defendants to go out and make an extensive investigation and maybe get a different story from these people who will be witnesses, we say that we both are entitled to the same information.

At this time I want to apologize to Your Honor for having taken this much time but these motions are important to us. They are important to us and we appreciate the Court's consideration of them.

The Court: Well, since it is just a few minutes until noon, I wouldn't want to break up the argument. Do you think you can be back at 1:45?

Mr. Sharpe: Yes, sir.

The Court: Is that satisfactory?

Mr. Wilkey: Yes, Your Honor.

The Court: 1:45, Mr. Reporter.

(Noon recess.)

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The Court: All right, you may proceed.

Mr. Bottler: Your Honor, I am going to present the Government's argument with respect to the first two motions, and Mr. Wilkey will take the last, two.

Discussing the motion to quash and dismiss the indictment, I have observed with interest Mr. Sharpe's characterization of the indictment as not showing—taking more words and showing less. I suspect that attorneys for both sides are liable to take a rather sharp view of the thing and I—

Mr. Dowd: Excuse me, Your Honor. May I leave the courtroom just a moment?

The Court: Surely. You really aren't going to be active in the argument anyway, are you?

Mr. Dowd: No, sir.

The Court: You may go.

Mr. Bottler: My view may be white, and certainly Mr. Sharpe's view of the indictment is black, Judge, and I

that Your Honor has had enough experience with these indictments to read and see what the indictment sets out.

The brief which the Government has filed dealt with each of the points raised in the motions. On the argument before the Court this morning it appeared that the point which the defendants were really aiming at, the main point, was that the indictment didn't sufficiently set out a scheme or artifice to defraud, to obtain money by false pretenses. They, or Mr. Sharpe went into at some length the United States vs Hess and the Government has no argument with United States vs Hess or the cases which followed it. That case involved an indictment which merely alleged the words of the statutes and said in effect that he had devised a scheme and artifice to defraud and that pursuant thereto he had used the mails. I think everybody recognizes the fact that is not enough for mail fraud indictment. He had to set out something about the scheme or set out representations which were alleged to be false and fraudulent. The most of the cases cited were quite old, in the brief of the defendant, however, I feel that a reading of those cases will show that they are not applicable on the facts of this case. The citations and the listing of the cases are extremely lengthy in the brief. However, if the Court will read the entire cases, including the part omitted from defendants' brief, I believe that he will see they are not applicable to this situation.

Coming down more to date, the Appendix Forms of Rules of Criminal Procedure sets out a model indictment for mail fraud and, as Your Honor is aware, Government attorneys like to follow some form in preparing these indictments.

If the criticisms which were made by Mr. Sharpe were valid this model indictment would be absolutely no good. If I could just take the time to go over it, it is quite short—

The Court: Counsel, don't feel like I am rushing you. Take your time. I feel like you are probably saving me time in the long run, so don't hesitate to take whatever time you think is necessary.

Mr. Bottler: All right, Your Honor. Thank you.

The Court: Both sides.

Mr. Bottler: The indictment commences: "Prior to the blank day of blank and continuing to the blank day of blank the defendants John Doe, Richard Roe, et al, devised and intended to devise the scheme and artifice to defraud purchasers of stock of XY Company, a California corporation, and to obtain money and property by means of the following false and fraudulent pretenses, representations and promises, well knowing at the time that the pretenses, representations and promises would be false when made."

Now this is what follows: "That the XY Company owned a mine at or near San Bernadino, California, the mine was in actual operation, the gold ore was being obtained at the mine and sold at a profit, the current earnings of the company would be sufficient to pay dividends on its stock at the rate of 6 per cent per annum."

And that is the end of the charging part of the indictment, with the exception of the allegation of the use of

the mails. In other words, they say, "By means of the following false and fraudulent pretenses, representations and promises, knowing at the time that they would be false when made."

Now in the indictment in this case, in Paragraph 14, recites: "Prior to the first day of September, 1949, and continuing to the twentieth day of February, 1954, the above mentioned George B. Parr, et al," which is directly in line with the model indictment, "all herein indicted as defendants, devised, and intended to devise a scheme and artifice to defraud the BISD," setting out the persons intended to be defrauded, "and to obtain the money and property of the BISD and the taxpayers for themselves, their relatives, associates and supporters."

The next paragraph is: "It was a part of said scheme and artifice to defraud that defendants would make the following false and fraudulent pretenses and representatations, well knowing that the pretenses and representations would be false when made:" and then we set out three statements. This is following almost word-for-word the model indictment. The allegation that they are false and fraudulent is exactly the same allegation made in the model indictment.

"(a) That BISD checks (also known as vouchers) drawn on the depository bank of the BISD, the Texas State Bank of Alice, Alice, Texas, were issued to persons and concerns for services and materials furnished to the BISD."

Mr. Sharpe made the point that that could be a perfectly true statement. However, the Government has negatived it by saying it was a false and fraudulent pretense and

representation. That would apply also to the model indictment, that the XY Company owned a mine at or near San Bernadino, California, and that the mine was in actual operation, could have been a true statement on its face, but the indictment in this case is negatived in exactly the same way that is set out in the model indictment.

The Government did not stop with Paragraph 15, where it set out these representations which were negatived as we have just discussed, but in the next paragraph, Paragraph 16, gave 23 specifications of what the scheme and artifice consisted of, and I believe that a reading of those 23 specifications will show very clearly what defendants were charged with doing.

I might briefly state that George Parr and the rest of the people involved in the BISD and the banks were engaged and had devised a scheme to take money from the BISD in almost any way and every way it was possible to conceive of. These methods are set out.

Now, every single paragraph in here or subparagraph does not necessarily have to be unlawful in itself in order to set up the scheme or plan, every statement of what the plan was doesn't have to be fraudulent in itself.

The Court: Well, in the main the two problems that you mostly are concerned with are, one, with issuing checks to either fictitious persons or persons for material and labor which were not had and received, are they? That is one?

Mr. Bottler: That is one of them.

The Court: And the other is, I understand from some place, but I don't know whether I find it in this indictment or not, that they had duplicate tax receipts of some kind and they would get the checks intended for the School District, take them and divert them for their own use, and send them back what purported to be a tax receipt, but what in fact was a duplicate of something they compiled from the receipt. Is there anything like that there?

Mr. Bottler: Yes, sir, that is in subparagraph P.

The Court: Subparagraph P?

Mr. Bottler: Yes, in 16. And there is a third.

The Court: What is the third? Let me read P.

Mr. Bottler: O and P.

The Court: O and P?

Mr. Bottler: Yes, sir.

The Court: They are mainliners, too, are they?

Mr. Bottler: Yes, sir.

The Court: All right, let's see. Yes, P. Cashed checks— (reading subparagraph P referred to to himself).

All right. Then what is the other one?

Mr. Bottler: Your Honor, the next one is contained in O.

The Court: Back up ahead?

Mr. Bottler: Yes.

The Court: Obtain materials, equipment and supplies— (reading subparagraph O referred to, to himself).

Those are the three main ones?

Mr. Bottler: Well, there is a fourth one charged.

The Court: All right, what is that one? Read me that one?

Mr. Bottler: That they would deposit tax funds of the BISD in unauthorized bank accounts which would be withdrawn by Defendant D. C. Chapa. In other words, the tax funds would come in and would be deposited in a bank other than the authorized bank and be withdrawn by the defendant Chapa.

The Court: All right. I see. Go ahead. I just wanted a little illumination on those points.

Mr. Bottler: These specifications state in order what the defendants would do to carry out this one main scheme to defraud the BISD, that they obtained money from taxpayers, State available funds, they put the money into the Texas State Bank at Alice, they would issue BISD checks drawn on the depository bank and payable to fictitious persons and concerns, that they would falsify checks and records showing that such checks were issued to persons and concerns for services rendered, labor and materials furnished, supplies furnished, for equipment furnished, whereas in truth and in fact no such services were rendered, no labor and materials furnished, no supplies and equipment were furnished.

I think the specifications negative the representations which are alleged to be false and fraudulent, in addition to following in Paragraph 15 the form of the model indictment.

There is another matter which I think perhaps is a basis to the approach of the defendants to this indictment, that I think contains a misconception. It is applicable both to the motion to dismiss and the motion for the bill of particulars. That is, the defendants keep striking at the point that the Government has to prove an executed scheme. Now, the Government in a mail fraud case, if it had a witness who could testify that he heard two of the defendants working out the plans, scheme and artifice that they decided that they would, say, take the money and put it in the Texas State Bank at Alice and write fictitious checks on it, and they discussed that between themselves, if the Government should have such a witness and proved up the required use of the mails, they would have made the mail fraud case. A mail fraud is in many respects similar to a conspiracy count. The Government has the burden of showing that the defendants devised, or intended to devise, the scheme or artifice or plan and that pursuant thereto, in execution thereof, they did what amounts to an overt act, that is, the use of the mails in furtherance of that scheme.

The Government brief, I think, adequately takes care of the other points raised in the motion. I would like to say with regard to the Halsey case which is cited by defendants in support of the motion to dismiss that actually the decision which they support held that the indictment as it stood was sufficient. It was later quashed after a bill of particulars was filed and the Supreme Court held that the Court had quashed the indictment based on the pleading in the light of the bill of particulars, but it wasn't a ruling on the indictment itself and, as a matter of fact, the Halsey case, the case reads:

"It will shortly appear the indictment proceeds later to state the income producing character of the bonds, their safety and soundness as investments and the subject of specific representation said to be false and fraudulent pretenses and promises. Such specific representations, three in number, are then set out in the indictment after saying they are false and fraudulent, one, that the said gold debenture bonds were and would be income producing investments until paid, two, that said gold debenture bonds were and would be good and safe sound investment which would be paid on or before their maturity, three, that said gold debenture bonds were amply secured by deposits of the trustees of all of the common capital stock, $2,500,000 general mortgage bonds of said Wardman Real Estate Properties, Inc." The Court in discussing those representations says, "In other words, the three representations last above noted, on demurrer, will stand the test and may be viewed as representations, although general, as matters of fact which, being negative, guarding their proponents from being charged to have been made with fraudulent intent, together furnish ultimate fact ingredients for the scheme, artifice and pretense."

With regard to the indictment being duplicitous, of course it is proper to charge injunctive of the use of the term "and devise and intend to devise a scheme and artifice to defraud and obtain money and property by false pretenses." The reading of the indictment shows that there was one scheme and artifice to defraud, and under the Weiss case, a Fifth Circuit case, and other cases similar, he recites that there may be diverse object of one general scheme, does not mean that the indictment becomes duplicitous.

I would now proceed to the second point or second motion, that is the bill of particulars. The Government has several points to argue with respect to the bill of particulars filed by defendants in this case. The bill of particulars is an extremely lengthy, involved and detailed bill. Some 330 requests are covered by the bill, asking for almost every conceivable detail of the prosecution's efforts.

Now, the defendants have said that they recognized that the bill of particulars process is not designed to obtain the evidence of the Government. Nevertheless mature consideration of the bill of particulars leads to the inevitable conclusion that that is exactly what the defendants are trying to get this Court to order the Government to do. That is, to spread out its entire case. The general proposition, I think, is supported by numerous cases cited in the brief, and is that if the indictment fairly apprises the defendants of the charges against them and enables the defendants to avoid the second prosecution for the same offense, that the trial court may deny the bill of particulars. In this regard Carter vs U. S. is one of the most recent Fifth Circuit cases. In that the Court said—Judge Allred, 1953—"The elements of the offense covered by the mail fraud statute are, one, intention to defraud and, two, execution of the intention by use of the mails. These elements were clearly charged and we do not believe the Court abused his discretion in refusing to grant the motion for a bill of particulars." The Government would like to point out that different types of offenses by their nature may require different relief by way of bill of particulars. For example, defendants have cited two types of cases, among others, income tax cases and viola-

tions of the Sherman Anti-Trust Act. In the income tax cases, a bill of particulars have been allowed where the skeleton or short form of indictment has been used, to give certain details of the offense charged. That reasoning is not applicable to the mail fraud statute and it is particularly not applicable to this indictment which sets out in detail the plan of the defendants. The—

The Court: One thing that Mr. Sharpe complained of rather strongly, I won't say bitterly, is lack of dates, lack of encompassing dates between such and such a time.

Mr. Bottler: Well, with respect to dates, of course the gist of the offense in the mail fraud statute is the use of the mails in the execution of the scheme. Now, similar to the overt acts in a conspiracy the dates are set out with regard to each use of the mails and there is a statement in Paragraph 14 which follows the model indictment with regard to setting of the—devising and intending to devise a scheme. Now, the actual date of devising the scheme is no element of the matter charged. What is involved is that the Government prove that there was in existence this scheme or artifice. The Government's position is, and I believe that it is borne out, that we are required to show the time of the substantive use of the mails but all we are required to do in regard to the proof of the scheme or artifice is to show that it had been devised or was intended to devise, and that this use of the mails for the specific date was an execution of that scheme.

Now, the defendants, in their bill of particulars, inquire repeatedly as to the exact place and time at which each of

the defendants came into the scheme and what they did with regard to coming into the scheme. Now, we have briefed what we think the law to be clearly, with respect to that, and it is set out in the Hoaglund, Mendelson, Rubio, Sawyer cases cited in our brief. We recognize that in certain types of cases, namely the Sherman Anti-Trust cases, that in some situations the Court has allowed statements as to the time and place, but, however, with regard to offenses other than anti-trust the rule is that the Government is not to be tied down to places and times certain defendants came into a conspiracy. And the reason advanced by the Court of Appeals in ruling on this has been that in many conspiracies the Governmnt is required by the very nature of the conspiracy to show by circumstantial evidence the existence of the conspiracy and to require it to make that statement a bill of particulars would be to defeat nearly every prosecution under the act. I have set out those cases in some detail in the brief itself.

As I see the law with regard to the mail fraud cases there has been a reluctance on the part of the courts to grant any particulars with the exception of allowing defendants to have the letters sent through the mails and use of the mail charged in the substantive counts. We would refer the Court to the indictment to see that it clearly sets out the offense charged, as was done in Carter vs United States, and we would like to point out that there has been a discussion of fraud cases in the United States vs Reubenstein, which is 9 FRB 255, Southern District of New York, 1949. Prosecution for mail fraud and violation of the Securities Act. The Court said, among other things, "Bills for particulars are not intended or designed

to furnish defendants in advance of trial with a detailed statement of the evidence to be used against them. Where charges are predicated upon fraudulent acts of the defendants great latitude has always been allowed the prosecution. Limitations, if any are to be imposed, are to be set by the trial court and not by restrictions imposed in a bill of particulars. The allegations of the indictment make further particulars unnecessary."

One of the reasons that the Courts have given for refusing to confine the Government by a bill of particulars in fraud and mail fraud cases has been that the Government is allowed to prove on the trial of the case similar offenses to show the intent and design. And that it will not do to limit the Government, normally, in this kind of case.

The second point that the Government would like to make in regard to the defendants' bill of particulars, and there it goes into very great detail trying to get the Government to set out evidence which would show exactly what was done in the execution of the scheme, and as we discussed on the motion to dismiss the indictment, that forms no part of the elements of the crime. The case that is in point, and I think quite analogous, is Norcott vs United States where the Court said it would be possible for the Government to make out a case under the mail fraud—no, I'm sorry.

In the United States vs Barsky, 7 FRD 38, a bill of particulars was sought on information as to the acts or actions charged in respect to each of the defendants which allegedly constituted the encouragement of the defendant

to refuse to produce records subpoenaed by a Congressional Committee and for willful default in failing to produce the records.

Judge Holtzoff in this case denied the bill of particulars which sought information as to the act or actions charged in respect to each of the defendants which allegedly constituted the encouraging of another defendant to refuse to produce the records. The Court says, "This request overlooks the fact that the defendants are not charged with the substantive offense"—that was of refusing to produce the records—"but with the conspiracy to encourage Helen Bryan, a defendant, to violate the law. It may well be they never did encourage her but a mere agreement to do so constitutes conspiracy if it is followed by an overt act to carry the conspiracy into effect. Paragraphs Nos. 4 and 5 of the motion seek information as to the acts or actions of which the willful default of the defendants consisted. Again it should be borne in mind that the defendants are charged with conspiring to defraud and not with the affirmative act."

The Judge in that case, incidentally, denied another request for setting out the date and place where the conspiracy was initiated, and the dates and places at which each of the defendants joined the conspiracy, because: "It is well known in charges of conspiracy it is frequently impossible to fix in advance the exact day and the specific place in which the defendants gathered together to form the conspiracy."

That case is analogous to the mail fraud case. There is the common ground that the Government must prove that the scheme or plans had been formed but it does

not have to prove that it has been successfully executed. There are numerous cases, including Carter vs United States, which hold that it is not necessary for the Government to prove the execution of mail fraud scheme other than the use of the mails.

Another Fifth Circuit case dealing with the fact that the Government is not required to show matters which are not elements of the crime is Fabacher vs United States, 84 F 2d 602, where the defendant requests the Government to furnish information as to the exact place in the City of New Orleans where defendant had possession of and sold tax-unpaid articles. The Court said the exact location was not an element of the offense charged and there was no abuse of discretion of the trial court in refusing the bill of particulars.

In U. S. vs Lang, 40 Sup. 414, is to the same effect; characterizing demand with regard to completed conspiracy as being demand obviously for the Government's evidence. In that case also they refused to grant particulars as to the time and place where defendant entered into the conspiracy, with which of the other defendants he had dealings, contact in relation to the conspiracy and what he agreed to do in furtherance of the conspiracy.

Braatelien vs the United States, which I'd like to go into on another point later, is also to the same effect. Braatelien demanded that the wrongful acts committed by him should be specified with the names of the persons and places. The Court pointed out that the wrongful act charged was conspiracy to defraud. Any further specifications of facts could consist only of evidence and

witnesses. The Government says defendants miss the mark when they ask for specification of facts which would be elements of an offense not charged by the indictment. If they are entitled to anything it is only to a more specific detailing of what is charged. Of course, our contention is that the detailing in the indictment is clear.

The next point the Government makes is that the particulars sought, if furnished, would disclose the prosecution's evidence and spread the prosecution's entire case before the defendants. It is not the office or function of a bill of particulars to require the Government to make a complete discovery of its case. That was first established in Wong Tai vs United States, a leading, if not the leading case on discovery, 273 U. S. 77, and it has been cited and that statement made also by the Fifth Circuit as late as 1953 in Johnson vs the United States. Reading from the bill of particulars' 330 requests, asking as to each of the eleven defendants, shows on its face that what the defendants are trying to do is to get together the complete evidence.

In Rubio vs the United States the Court said—that was a prosecution for conspiring to purchase and transport intoxicating liquor in violation of the National Prohibition Act—the Court said:

"To require the Government to set forth every act tending to connect each of the parties charged with the conspiracy, and every act committed by each of the parties in furtherance of the object of the conspiracy, would be to require it to make a complete discovery of its entire case. Such is not the office or function of a bill of par-

ticulars. In almost every prosecution, facts and circumstances are given in evidence of which the charge in the indictment gives no notice. If the defendant is taken by surprise, the court has ample power to protect him by granting a continuance upon a proper showing, or by granting a new trial if his rights cannot otherwise be safeguarded; but, if not taken by surprise, he has no just ground for complaint."

Hoagland vs U. S. followed that case.

Incidentally, in both of those cases the Court said it was proper to deny the particulars requested by the defendant to require the Government to specify the particular time and place and to limit the proof to the time and place of the conspiracy.

We have cited other cases to the same effect but I'll not go into those at this time.

One of the next main points to be taken up is the defendants' request that the Government inform as to the facts concerning the aiding and abetting—aiding and assisting, and procuring the offenses charged in the indictment. There are several cases where defendants have tried to get similar particulars and they have been refused by the courts. United States vs Brown, 56 F 2d 659, refused to give a bill of particulars with statement of specific acts alleged to have been committed by defendant aiding and assisting, procuring, counseling and advising in preparation and presentation of an income tax return, and the statement of the acts constituting his conduct in preparing and causing to be prepared the income tax return.

Another case, Pines vs United States. That is an Eighth Circuit case in 1951. Dealt with prosecution for transporting false securities in interstate commerce. The defendant demanded by bill of particulars that he be informed whether the Government expected to prove that the defendant actually transported, or caused to be transported, the described securities, and if he caused them to be transported, the ways, means and precise agency or person used in causing the transportation to be made. This I believe is a White Horse case with regard to the defendant's contention of with what he should be informed of with regard to the acts of a principal, aiding, assisting and procuring. In Pines vs the United States the Court said, "the denial of this request was clearly proper and certainly not an abuse of discretion."

Likewise another request was denied where defendants asked to the informed of the precise ways and means it was claimed that the defendant did transport, or cause to be transported.

Now, Pines vs the United States has been cited with approval by the Fifth Circuit in 1953, that's Johnson vs the United States, 207 F 2d 314, the Court stating in that case: "The Government should not be compelled by a bill of particulars to give a detailed disclosure of its evidence as would have been required by the compliance with the motion."

United States vs Steinberg is another case where the defendant asked for a bill of particulars for the manner and means, together with the names of participating parties, in which it was charged he aided and abetted. The Court denied his request on the basis that since clearly the

defendant knew the offenses charged, the information was peculiarly within his own knowledge and it would require the Government to disclose its evidence before trial.

In 1955, United States vs Brennan, 134 F. Sup. 42, the defendant asked for certain names of the Porters, Archer, Daniels Midland Company. This was a prosecution for violation of the Taft-Hartley Act, payments to representatives and labor. And reading further it says as a further example defendants asked for particulars as to the manner in which Connelly and Moore did aid, abet, counsel, command, induce and procure and cause the Porters, Archer, Daniels Midland Company to commit the offense charged. This is a matter of evidence for the Government to present at the time of trial.

All of those cases deal with the point that the defendants would ask in great detail, in their request here, for details as to aiding and abetting under the principal statute.

"Appellants have made the contention here that the indictment is vague, indefinite, uncertain. What they are really complaining is that the indictment does not set forth evidentiary matters."

The next point that the Government would like to make is that the particulars requested are within the defendant's own knowledge, may be procured through sources available to them, or are evident from the indictment.

Now, the defendants here are the president and chairman of the Texas State Bank at Alice, and the San Diego State Bank, president of the Board of Trustees of the

Benavides Independent School District, secretary, the tax assessor-collector of the Benavides Independent School District, various directors of the Benavides Independent School District, directors of the banks, and the two banks where money was deposited. Those were the people who had custody and control of the records involved in this case.

Now, the records mysteriously disappeared during the course of an investigation in this case, while they were in the custody and control of the defendants in this case. This having been accomplished the defendants now want the Government to itemize its remaining evidence. We would like to state that the defendants make common cause here; they are represented by one battery of attorneys. Together they know more about the facts, the circumstances, the way the school district was operated, the annual reports, the dealings involved, than does the Government, certainly. Also we'd like to point out that George Parr instituted a civil action in the State Courts of Texas against Diego Heras—that's the person that they are anxiously seeking in this bill of particulars, as well as the opportunity to get a copy of every statement that he ever made. Mr. Parr took Diego Heras' deposition in this State Court suit for slander and libel, under an agreement that both Diego Heras and Mr. Parr would be furnished for depositions. After Mr. Heras' deposition was taken, in which these whole transactions were gone into at great length, Mr. Parr's attorney dismissed the suit. Mr. Parr ended up with Mr. Heras' deposition concerning these transactions and Mr. Parr did not give his own deposition in that suit.

That is a method of discovery which is not contemplated, the Government says, in the Rules of Procedure.

We would also like to point out that in their affidavits the defendants do not show any real cause or complain that they don't know what was going on and what they are charged with. They don't say that they haven't had an opportunity to examine Jewell Mayfield. They haven't shown the proper cause and as stated in Jencks vs U. S., Fifth Circuit, 1956, the burden is on the defendants to show cause why a bill of particulars should be allowed. In that case they pointed out that there were no affidavits in support of it and the Government would say that there are no affidavits in support of this bill of particulars which show cause why the defendants should be furnished all the details as set out here.

It is an elementary rule that the Government is not required to set out information within the knowledge of the defendants, or information which he has an equal opportunity with the Government to discover. There is no contention that the defendants do not have access to the annual reports of school funds which set out the disbursements, which are in Austin, Texas.

We would also like to say, of course, and I believe the defendants recognize this, that they are not entitled to legal theories of the Government's case, or legal conclusions. Nevertheless, in several of their bill of particulars they ask for legal conclusions, for what is the meaning of certain parts of statutes of the State of Texas, and they also ask for legal theory with respect to principals.

The Courts from time to time have been faced with bills of particulars similar to the one involved here. That is, bills of particulars which have in great detail attempted to procure the evidence and they have not hesitated to

deny the bill of particulars because of this fact, and we have cited in our brief the Sawyer case, Sawyer vs United States, 89 F 2d 139, which is an Eighth Circuit case; and Johnson vs United States, another Circuit Court case, and also Wainer vs Wells. Those cases are directly in point. We would like to point out, though, that in the Sawyer case there were only 42 separate items requested, whereas here there are 330 requests, which would require a volume of enormous size even to attempt to answer.

In Wainer vs United States the defendants requested by a bill of particulars that the Government would advise them when each and every defendant became a part of the conspiracy, the specific act and time, and time and place of the last act of each defendant in connection with the conspiracy, and what part each of them had. The Court, after stating that the motion for the bill of particulars should have been presented before the trial, stated in addition that the information requested was of such character as to disclose the unreasonableness of the request, and it was justified in exercising the Court's discretion to deny the motion because of that fact.

Another point that the Government would make or set out in its brief is that they seek to unduly limit the evidence of the Government and to deny it opportunity of evidence which might be uncovered in other State prosecutions which might occur prior to this time.

Finally, in our last section on this we have set out our conclusions which are based upon the cases cited before, we have differentiated from the anti-trust cases which were cited by the defendants, income tax case, pointed out that the Courts themselves in applying the anti-trust cases,

such as Medina case, has said that such actions are sui generis and not to be considered in the light of the statute involved in the peculiar circumstances of large corporate defendants spread over the country. Those factors are not involved here. We have a tight little island down in Duval County; we don't have all of the shoe-leather findings people in Greater Metropolitan New York, where some seven or eight million people are involved, and many millions of dollars every years.

Even in the anti-trust cases there has been a distinction made where there was one association in one town, and bills of particulars have been denied where that is the case. I think that U. S. vs Greater Pittsburgh Linen Supply Association, the 1950 case in the Federal Rules Decision, correctly shows that limitation on the anti-trust suit and would apply in this case because all the defendants are located in that small area around Benavides. We recognize it is impossible to put every decision of every District Court on bills of particular and make them fit into one mold or pattern. We mentioned the Lieberman case, cited by the defendants, in our brief but believe that the main stream of authority is best set out by Pines, Brown, Steinberg and Brennan, from which I have read to the Court.

I believe that is all that we have to state with regard to oral argument on the motion for the bill of particulars.

The Court: All of the cases you mentioned are mentioned either in your reply brief or your main brief?

Mr. Bottler: Yes, Your Honor, they are mentioned. Each and every one. The only thing—yes, this is mentioned. The only case—well, it's not a case, I didn't put in this model form indictment.

The Court: That is included in the books though?

Mr. Bottler: Yes, sir.

The Court: All right.

Mr. Wilkey: May it please the Court, I want to discuss first the discovery motion of the defendants and the cases and rules pertinent thereto. With a minimum of attention to what's been filed in the briefs already and which is before the Court in written form, and with maximum attention to what we think at least are the principles, the basic principles involved here, in answer to the arguments put forth by defendants' counsel today.

It is the position of the Government that Rule 16 is the only discovery rule in the Federal Rules and that within the limits of that discovery provision we are willing and have offered to give the defendants all that they are entitled to have under any interpretation of that rule. In considering the purpose of that Rule 16 for the limited discovery allowed in criminal cases we refer the Court to the Peltz case—P-e-l-t-z—which is cited in our brief, a recent, very recent decision by Judge Herlands, in the Southern District of New York, which contains not only an exhaustive analysis of the legislative history, but also at the end a very convenient table of all of the cases decided up to that time wherein motions for discovery had been made under Rule 16 or motions for subpoena under Rule 17(c).

That Peltz case has been followed by Judge Kaufman in the Hall case, by Judge Murphy in the Kiami case, and by other cases cited in our brief, not including one which just came to my attention last night. The Gogel case—

G-o-g-e-l—being a decision by Judge Irving Kaufman and appearing in Volume 19 of the Federal Rules Decisions just coming out in June, last month.

Now the purpose of Rule 16 is to give the defendants a limited discovery of those documents which the Government has obtained by subpoena from either the defendants or other persons or anything that may have belonged to the defendants. And this we are willing to do. But the legislative history shows that in Rule 16 the second draft of it contained the provision that the defendants were also to have access to all matters which might become evidentiary in the proceedings in the Government's case and that this was stricken out and the more limited provision, limited to those obtained by process, was put in. And so we say that it is clear on the legislative history, as that decision in the Peltz case which has been followed in several other decisions, makes very clear that the legislative history shows that only those limited categories are available for discovery.

Now the defendants have urged various motives and reasons and purposes why they want to look at the evidence of the Government. None of those purposes or motives would justify the defendants looking at it under Rule 16 or Rule 17(c). Rule 17(c) is strictly a procedural device to get into court before trial the documents and volumes of evidence which may be admitted in the proceedings. It is not a device of discovery and the Supreme Court in the Bowman case, and all of the cases following that, have so held. The courts have reiterated over and over again this Rule 17(c) is not a discovery device, it is a mechanical device of subpoena to get the evidence in prior to trial instead of waiting until the time of trial.

Now, for what purpose is that? As the Supreme Court said in the Bowman case it is for the purpose of evidence that the defendants may want to use themselves. I call your attention to this, Your Honor, that nowhere in their pleadings have they urged that they want to use any of this evidence themselves, and the very description of the evidence that they seek to look at shows that they wouldn't at the last resort introduce such evidence themselves. They want to look at the Government's case and that, under Rule 17(c), they cannot do.

This case—one not cited in the brief, I read it for the first time at noon today, and I just discovered its existence last night—it's the decision by Judge Kaufman, the most recent opinion by any court that I have found on this. This is the complete opinion, in 19 Federal Rules, U. S. vs Gogel. "By this motion"—

The Court: What is the page number?

Mr. Wilkey: 107. 19 Federal Rules Decision 107.

"By this motion defendants seek an opportunity to inspect the transcript of an unsigned question and answer statement given by a defendant to an agent of the Bureau of Internal Revenue and it appeared doubtful that defendants intended to use such statement as evidence, defendant's motion would be denied. The limited discovery provisions of Rule 16 do not extend to statements by defendant to Government agents and that Rule 17(c) cannot be used as a device to circumvent this restriction. Pretrial inspection under Rule 17(c) will only be granted pursuant to a subpoena duces tecum issued by defendant in a legitimate effort to obtain possible evidence where it

appears that postponing production of the requested documents until trial time will tend unreasonably to delay the trial. As I stated in my earlier opinion it is doubtful if defendant intends to use such a statement as evidence. Further, should he so intend, the trial will not be unreasonably delayed in order to afford counsel the time necessary at the trial to inspect the 16-page document which is being withheld. Motion denied. So ordered."

And that is the complete opinion in the Gogel case.

Which the point is that 17(c) is not a discovery technique, it is a technique of avoiding delay for the purpose of giving evidence to the defendants that they legitimately intend to use, and this they have not even alleged in their pleadings.

Now, in their brief which is mainly devoted to Rule 17(c) rather than Rule 16, they rely on four cases. It is the Government's position that three of those cases properly interpreted, and two of them have been interpreted by the Supreme Court—by the Fifth Circuit—three of those cases actually help the Government's position. We've cited two of them. And the fourth case is the District Court opinion in Washington, D. C. which relates to peculiar rules and statutes which they have in Washington, D. C. and nowhere else. And that case helps the defendants only part way and part way helps the Government. Those four cases are, as they have cited them, first of all the Touhy case, Touhy vs Ragen. We did not cite this case because it is not concerned with a criminal prosecution but it does illustrate the point we make here on the steps of discovery under Rule 17(c) and Rule 16. In the Touhy case, Touhy sought a writ of habeas corpus in an effort

to make his own case, to get the evidence to support his habeas corpus he sought certain documents which were within the possession of the Government. Now note this is not looking for the Government's case, to take a look in advance to discover the Government's case, it is looking for documents to make his own case on habeas corpus. That case was decided on the basis of the executive order of the Attorney General as to whether or not an agent could produce such documents, and I believe that they were denied. As far as it is relevant to this case, and the Federal Rules of Criminal Procedure were not mentioned there, as far as it is relevant it shows that the only purpose the defendants can have to look at documents except those specified in Rule 16, are those which the defendant needs to make his own case.

The next case relied on by the defendants is the Bowman case.

The Court: Were there any signed statements in this case?

Mr. Wilkey: Your Honor, those statements—there are no signed statements in the possession of the Government of any of the defendants. Let me check with co-counsel. Is that correct?

Mr. Bottler: I don't believe that there is.

Mr. Wilkey: There are no signed statements by the defendants, I am satisfied of that.

Now, in regard to the Bowman case the defendants obviously take a completely different interpretation of that than we do. We cited Judge Kennerly relied on that case, it was the only case Judge Kennerly cited in U. S.

vs Parr where he denied in toto the motion for an attempted subpoena under Rule 17(c). In that case, in the Parr case, Judge Kennerly granted the limits of discovery under Rule 16 which we have freely conceded in this case, without any quibbling, including even documents subpoenaed in the Western District of Texas, which are physically there and not under our control. We will attempt to get them for the defendants. To which, incidentally, Defendant Parr has already had inspection.

The Bowman case makes clear, as it repeats throughout, that a subpoena under 17(c) deals with material admissible in evidence, that the test of whether it is even subject to a subpoena is whether it is admissible in evidence. And it refers to a bona fide attempt of the defendants to get such evidence for use, again showing that the motive or the purpose of Rule 17(c) is to let the defendant obtain evidence for his own use at the trial, not to look at the Government's case.

Now, then, the fourth decision cited by them, it is not discussed at length, is the Bell decision in the District of Columbia by Judge Laws. Judge Laws was bound by the decision of the Court of Appeals there in the Fryer case, which was a murder case going off on a particular statute that makes obligatory on the Government the production of statements of prospective witnesses. That statute applies only to the District of Columbia. And following that, the Court—

The Court: That is only in capital cases.

Mr. Wilkey: Only in capital cases, yes, Your Honor.

Now, following that Fryer case the District of Columbia courts, or at least some judges, have expanded the normal Federal Rules in some cases to grant signed inspection of signed statements of the defendants, and that's what they did in this case here, in the Bell case. But in other parts the request was denied and that is where it helps the Government, even though it is a District of Columbia case here.

Now, Your Honor, we rely on the Bowman case, a Supreme Court case, on the Gordon case, a Supreme Court case, which is also mentioned by the defendants, and on two Fifth Circuit cases, Shelton and Jencks, and the very fine analyses in the Peltz and Hall cases in the Southern District of New York.

Now, what is the significance of the Bowman and Gordon cases? The Bowman case shows, as I discussed before, that Rule 17(c) is not to expand the limits of Rule 16, which is discovery. And that the purpose of 17(c) is to obtain instruments admissible in evidence for use by the defendants themselves. Now, what is the significance of the Gordon case? The Gordon case shows when they become admissible. In the Gordon case at the time of trial, with a witness on the stand and after he had been questioned and a predicate laid for impeachment, then his previous statement made to the Government agent became admissible as impeaching testimony. Now, in the Shelton case—Fifth Circuit, Judge Hutcheson—Judge Hutcheson took the Gordon case and explained it and said that such statements of witnesses or defendants were not evidence prior to trial and would only become evidence after a predicate had been laid, as was spelled out by Mr. Justice

Jackson in the Gordon case. That's the Shelton case and that is the law in this circuit, as we understand it, irrespective of particular statutes in the District of Columbia. The Shelton case is contrary to the District of Columbia cases. The Shelton case is Judge Hutcheson's and two other Judge's decision in this District.

Then came the Jencks case and I will read one paragraph from the Court's opinion in the Jencks case, with which this Court I am sure is familiar.

"Appellant argued at length that he should have been permitted to explore the Government's files with the hope of turning up inconsistent statements by Government witnesses Ford and Matusow. Upon a proper showing that the Government has possession of such inconsistent statements and the presence of the other requisite conditions, a person charged with crime would be permitted to examine and use them." Footnote citing Gordon case, Bowman Dairy case, and the Goldman case, all of which are discussed and relied on in our brief. "But no such showing was made here and the Court below properly refused to require the Government to produce its files or any part of it for inspection. Compare Shelton vs United States." Referring back to Judge Hutcheson's decision.

So on this business under Rule 17(c) and taking a look at the Government's case, it will not be time until time for trial, after they have laid a predicate by examination of our witnesses on the stand to see if there are any inconsistent statements that they have made, according to the two Fifth Circuit cases and the Supreme Court in the Goldman and the Gordon cases.

In addition to these, which we consider the binding rule in this District, we cited some very persuasive authority, the Peltz case, the Hall case, and now the Gogel case, being decisions by Judge Herlands and Judge Kaufman. We therefore say that there is not one single decision cited by the defendants in their brief on motion for discovery which would enable them to look at one iota of evidence more than we have already freely offered.

Now, they conclude that section of their brief with a very stirring peroration by Judge Learned Hand in the Coplon case. Now that sounds fine, all about evidence must be brought out in the open, and so on, but at what time? At the time of trial. That is when it must be brought out and that is what Judge Learned Hand was referring to in the Coplon case because there the Government sought to use evidence obtained by wire tapping and refused to disclose to the defendant the evidence that it was going to use, the leads that led to the evidence. It offered to disclose to the Judge en camera but not let the defendant in on the secret. So the Court properly held that if the Government was going to prosecute on the basis of evidence which might be tainted by wire tapping then it had to reveal in full the wire tapping log to let the defendant and the Court analyze. That is a far cry from the discovery of pre-trial called for by the rules and for what Judge Learned Hand thinks about pre-trial discovery I give you his opinion on that. This is not on evidence at the trial as the Coplon case was, this is on pre-trial discovery.

"Under our criminal procedure the accused has every advantage. While the prosecution is held rigidly to the

charge, he need not disclose the barest outline of his defense. He is immune from question or comment on his silence. He cannot be convicted when there is the least fair doubt in the minds of any one of the twelve. Why in addition he should in advance have the whole evidence against him to pick over at his leisure, and make his defense, fairly or foully, I have never been able to see. Our procedure has always been haunted by the ghost of the innocent man convicted. It is an unreal dream. What we need to fear is the archaic formalism and the watery sentiment that obstructs, delays and defeats the prosecution of crime." We think that on pre-trial discovery that fits these defendants to a T.

Now, then, turning to venue, the motion for change to Corpus Christi. I noted in Your Honor's colloquy with opposing counsel this morning that you raised the question in regards to a crime involving intent. To the question of where the intent was formed would be relevant and bear on the question, I take it, of venue. I read here from the Fifth Circuit opinion in Kreuter vs U. S. 218 Fed. 2d 534.

The Court: Do you have it cited in your reply brief?

Mr. Wilkey: It is cited in our brief but not on this point, Your Honor. We cite it now.

This is the Fifth Circuit in a mail fraud case: "This overlooks the fact that the gravamen of the offense is the use of the mails. Therefore, he could be tried where he caused a letter to be mailed or delivered in furtherance of the scheme. The place where the scheme is conceived or put in motion is immaterial. It is the place of mailing or delivery by mail. The letters involved here were mailed

or received at the place of prosecution. The place where the scheme is conceived or put in motion is immaterial. It is the place of mailing or delivery by mail."

That is the theory on which we have drawn this indictment to present to the grand jury and it is the theory on which this case will be presented here in Houston, if Your Honor so rules.

Now, in the point of venue here there are two points, two hurdles, that the defendants must get over. In his analysis in his brief he seems to assume that he had made the first one. That is, there there was an offense committed in Corpus Christi.

The Court: In the Corpus Christi Division.

Mr. Wilkey: In the Corpus Christi Division, yes, Your Honor.

Now we are willing to grant that misdeeds were done in the Corpus Christi Division but those aren't the misdeeds of the charge in this indictment except in the conspiracy count, Count 20. We think defendants' brief, which of course was filed at the same time as ours, overlooks the language of our indictment, which was carefully drawn for several reasons. Notably being the kind of proof that we could rely on and that we intended to offer in the case. Also the previous decision on venue in the Parr case in this District. Now the language of that indictment in Count 1, for example, refers to letters which were caused to be taken from the mails in Houston, Texas. Now those counts, Count 1 and those similar to that, don't say anything about where those letters were mailed. It doesn't say they were even mailed in the Corpus Christi

Division. The proof at the trial will show where they were mailed, but all that is before Your Honor now is the indictment, the face of the indictment, and it shows that the act, the gravamen of the offense, in the words of the Kreuter case, the acts the Government relies on, was caused to be taken from the mail in Houston, Texas.

Now, then, other counts of the indictment like Count 3 say that they were caused to be placed in the mails in Houston, Texas. Some of those counts—I'm not sure that all of them, but some of those counts specify an addressee in the Corpus Christi Division. But the act alleged is the placing in the mails in Houston, Texas. Now, as our brief makes clear, that is in Houston, and Houston only, and from the face of the indictment you cannot even in some cases determine where the other end of the mailing took place. And, if you can't determine that from the face of the indictment, you can't say that venue on those counts is anywhere but Houston. Now, we cite in there and rely principally on Judge Hutcheson's decision in the Holbrook case, being a Fifth Circuit case arising in Georgia.

That concerned an income tax prosecution which is very similar on this venue problem and on which more opinions have been written in connection therewith than any other. Your Honor will see the comparison between mailing and the problem involved in the venue of an income tax prosecution. Here in the mail fraud case we have a taking from the mails, or placing in the mails. It is obvious that if it was taken from the mails it was mailed somewhere, but the indictment doesn't say where. Of course if it was placed in the mails we can say it is presumed to be delivered in the normal course of the post

office business and some of those I could specify in the Corpus Christi Division. There are two ends of a mailing transaction, we all know that. Now take the income tax cases. When they are brought in a place, say like Austin, where the filing with the collector takes place, that is the end of the transaction of fraud as far as the Government is concerned. The overt act alleged is the filing of a false return. Now, of course, somebody had to draw that return up and the taxpayer had to sign it, and usually he signs it in the district of his residence, which may not be Austin. It is well known in the case of Parr it was in the Corpus Christi Division. But the point is that certain acts of fraud, the making of a false return, the preparation of a false return, the concealing of income, the failure to list it on the income tax return, all of those take place at one place and they are all prosecutable as income tax violations under Section 145(b) of the 1939 Code, or you can prosecute the tail end of the transaction, the filing of the return, but these acts necessarily must take place first or there is no return to be filed. So we say that venue in the income tax cases can lie in one of two places, normally, wherever the Government can make proof best of the fraudulent act to evade taxes. The crime is the evasion of tax. The act is the filing of the return or the act is the keeping of false records, or the preparation of the false return, which would occur in the domicile of the taxpayer probably.

In the mail fraud case it's the use of the mails to defraud and the act that brings it under the Federal Government and constitutes a Federal crime, is the causing to be taken from the mails or the placing in the mails, and in our indictment that's in Houston, Texas.

Now, in the Holbrook case Judge Hutcheson had before him the same problem in an income tax case. And he says, sure, this statute—these are not the Judge's exact words, of course—this statute 3237, Section 3237, says that a prosecution may be had in either of the districts, and under the wording of the income tax statute we think it could have been, but that is not this indictment, because the indictment charge, the filing of the return in Atlanta, it was and should have been prosecuted in the Atlanta Division, not in the Gainesville Division where the taxpayer lived. Now, that was the issue in that case and that is the holding, I think it's the 1953 opinion, and we believe that is the rule on venue and the analysis of the venue question that should be before this Court. Now that is point one; that our indictment can only be tried, under the words of the indictment, here in Houston. The defendants would like, apparently now, to have an indictment which was worded to place them in Corpus Christi but that's not the indictment that was returned. Just as in the Holbrook case, the Government could prosecute it on the preparation of a false return in Gainesville, but it chose not to do so.

Now, then, why did the Government choose to come here to Houston? Among other reasons, and I point to Page 60 of the defendants' brief with some amusement, because they say there the Government should have considered Corpus Christi. We did consider Corpus Christi. We considered that if we filed this indictment in Corpus Christi that very likely, under the decision of the U. S. vs Parr, we would find ourselves automatically shunted to Laredo. We doubt very much whether these defendants would have come into Court, as they did today for the

first time, and say, "Oh, yes, we don't think there is any prejudice in Corpus Christi." We think they would have said, "There's lots of prejudice here. It's been judicially decided to exist and we want to go to Laredo," and to Laredo they would have gone. We had that to consider. We also had to consider where we could make proof, and if we alleged where the things were taken from the mail and where they were placed in the mail in Houston, we could prove those essential elements of the indictment, conferring Federal jurisdiction, by impartial witnesses here in Houston. Not people who might be linked with the defendants, or might even the knowledge rest exclusively in the minds of some of the defendants themselves. So, in the proof of our case we felt that it should go to Houston. And that, incidentally, in a Supreme Court case cited in our brief, was held to be a very important reason why a mail fraud case should be tried where that particular indictment was brought. We have cited the case; I forget the name of it now.

Now, then, there is another consideration. In the income tax Parr case the Government, on a motion for change of venue, took two alternative positions. We said first, we believe the man can be tried fairly in Corpus Christi, that you can get twelve jurors who are not prejudiced one way or another, but if we be wrong, if there exists so great a prejudice, then we say the defendant should be removed to that part of the Southern District of Texas where the circulation of the Corpus Christi papers is less and the infection of publicity in regard to the defendant and his associates is less, and those areas are Houston and Galveston. And in that case, which are on file here in your Court, we submitted affidavits or certificates showing the

circulation of papers broken down by counties, showing that in Houston and Galveston that Houston was the lowest point in the entire Division. There is less publicity about these defendants living—who live in the Corpus Christi area.

So when Judge Kennerly had it before him and said, "there is prejudice and we are going to send it away from Corpus Christi," we are not too greatly disappointed, but we did oppose the motion to Laredo and the Judge did send it to Laredo. But in doing so he uttered certain significant remarks which we consider bear on the Government's decision to bring this in Houston, and bearing in mind what Judge Kennerly said, we brought this case in Houston, which, by the statistics, has the least connection and the least subversity in regard to Corpus Christi and the particular acts of the defendants of any point in the Southern District of Texas.

Now, considering the evidence brought forth here today, turning now to the second point, which is the exercise of the Court's discretion. This is the last point that I have to develop before Your Honor. The moving of the case in the interest of justice. The defendants have made much of certain records that they claim exist down in the Corpus Christi Division. In the examination of the witnesses here today, Mr. Roach was only able to testify about one type of record which is relevant to this case and that was the microfilm records of banks—of monthly bank statements, and amazingly enough, to get those suitable for evidence and presentation in the trial, he would have to send them to Houston to the company here, to have them developed and prints made of those, so that they could

brought before a jury. So from his examination we discovered first that there is very little records left in the banks down there relevant to this case, and those, for their presentation, will require a witness from Houston that we didn't know about before. So if the defendant, or the Government, finds it relevant to have those records we'll need another witness from Houston.

As we pointed out in the brief, Your Honor, the records which we consider relevant to these offenses were subpoenaed before grand juries and are now in the possession of the Government, and those we are willing to turn over to them. So the records are either here in Houston or in San Antonio, and there is very little, to our knowledge, left in the Corpus Christi Division that is relevant to this case.

Now, then, as to Mr. Milligan. Mr Milligan testified that there was one book of minutes of the School District, but he didn't know what year it would cover, that there was a box of canceled checks with bank statements, and he wasn't sure what year they covered, and in regard to payroll records of the BISD, which would be rather relevant, I think, to the charges made in this indictment, they have been subpoenaed by the Federal Government. Those are the only ones of the records I recall that he mentioned specifically, so we don't think that those records are any grounds for transferring this case down to Corpus Christi.

And, as pointed out in the Texas Company case in our brief, where records are concerned and the records are scattered and are going to have to be moved anyway, considering those in the vault in San Antonio and those here in

Houston, there is no equity in the defendants' motion on the basis of records.

Now, in regard to witnesses, the defendants have plead loud and long for their witnesses, but what about the Government's witnesses? What about these people who are going to have to testify about the acts in the Houston Division? These, Your Honor, are employees of companies who were taxpayers in Duval County. They are the defrauded. They are the innocent people. They are the ones against whom no allegation to defraud has been made; are they to be inconvenienced by a trial in Corpus Christi and be away from their businesses for weeks, merely because the defendants are going to be inconvenienced by being away from their homes? So we think that for the convenience of all witnesses concerned, the equities here are at least as much for the Government as the defendants.

Now I call your attention again—

The Court: How about the records of the other bank? Is it likewise in the process of transition or liquidation, at San Diego?

Mr. Wilkey: It is in the process of liquidation, Your Honor. Records subpoenaed from that bank were brought before grand juries and are now in the possession of the Government, either in San Antonio or in Houston. Now if there are other records that are pertinent to this case we don't know about them, and the defendants have offered no evidence on that score except maybe one affidavit, which refers obliquely to records, which may or may not be relevant.

I think this case is unique on a change of venue, Your Honor, because in no case in history that we have been able to discover has a defendant making a motion for change of venue in the interest of justice done it to a place where he had already judicially established he could not get a fair trial. I call your attention to this, that the Defendant George Parr joined in this motion, he did not abstain, he wants to go to Corpus Christi as badly as the others. He established he couldn't get a fair trial in Corpus Christi. One of the defendants' own cases, the Erie Basin case, mentioned by counsel this morning, shows that on one indictment four people were transferred and two retained for trial in one District, so it could be done if the defendants wanted to do it; but George Parr joined in the motion for transfer to Corpus Christi, after establishing that he couldn't get a fair trial there.

It is impossible to ignore, Your Honor, the significance of that. And it is impossible to ignore not only the pleadings and the five or six hundred newspaper clippings showing prejudice that were submitted in the Parr case in this Court here, and considered by Judge Kennerly, whose office is a hundred feet down the hall here, and it is not possible to ignore the opinion of Judge Kennerly giving his distilled summary of his lengthy examination of affidavits and of the newspaper clippings. Now, this morning, to our surprise, the defendants come in and say, "We think there is no prejudice now." After the Supreme Court of the United States has passed on this venue question in the income tax case they are now not afraid to say there is no prejudice in Corpus Christi. We think the same situation still exists. We did not know that they were going to say that this morning but at noon I found here a recent

copy of the Corpus Christi "Caller", the newspaper complained of in the motions of George B. Parr, in the Parr income tax case, which is dated Friday, July 13, 1956, and since defendants' counsel are going to have an opportunity to reply to me, I think it not unfair if the Government offers this in evidence at this time as an exhibit, to show that the conditions and the circumstances made the basis of Judge Kennerly's opinion in this Court still exist in Duval County as of July 13. The headline on that says, "Three Rangers assigned to Cool Duval Politics. Foe of Parr charged with abusive language." That's the headline right-hand story of the Corpus Christi paper. And then there is another story in the same paper: "Hearing due in Parr suit today." Which is on a different thing. The same things we submit are going on in this county that went on before, that caused Judge Kennerly to decide to remove the venue.

(Thereupon the instrument above referred to was marked for identification, by the Clerk, as Government's Exhibit No. 1 here.)

Now let me read briefly from Judge Kennerly's opinion in this Court. This is from his written opinion transferring venue from Corpus Christi. "It is sufficient—

The Court: What is the date of the opinion?

The Clerk: July. Friday, July 13th.

The Court: No, I was asking about another matter. What is the date of Judge Kennerly's opinion?

The Clerk: Filed April 28, 1955.

Mr. Wilkey: It was filed April 28, 1955, and Your Honor is familiar with subsequent litigation in that, culminating in the opinion of the Supreme Court on the venue question which was handed down in June of this year.

The Court: The point they make in this is that there has been a change of sentiment or other things, in addition to the numerous witnesses that are down in that part of the country, and it is a fact that there are eleven defendants in this case, of which Parr is only one.

Mr. Wilkey: Yes, Your Honor. I am glad Your Honor brought that point up, that Parr is only one of the defendants. Of course he is the president of both banks, two of the corporate defendants, which makes him the chief person concerned in three out of the eleven, but in regard to the other eight individuals I want you to note the language of Judge Kennerly here, because his summary of the newspaper clippings show that the newspaper publicity was not confined to George B. Parr only, but to his associates, some of whom are the defendants here, and after all the prominence some of these people who are defendants here have achieved in the history of the State of Texas is due to their association with George Parr. Tom Donald, cashier of the bank of George Parr; D. C. Chapa, known as his chief political lieutenant in Duval County; the other people are, in themselves, not very important people except as they link up with the man who is known as the boss or patrone in that area and the newspaper clippings make reference to that and identify these defendants by name with Parr, and it will be clear from Judge Kennerly's opinion here.

"It is sufficient to say that the defendant has therein been given, during recent years, much publicity," —during recent years; it covers a period of time— "during recent years, much publicity, generally very unfavorable and sometimes most unfavorable. Such publications, generally with prominent headlines, are directly or indirectly with respect to defendant or persons closely associated or said to be associated with him, and concern political matters, elections, law enforcement, taxation, et cetera, generally and in the town of San Diego, and in Duval County, where defendant resides, and in some adjoining counties. They are also with respect to the killing at night of a young man at Alice, Texas, in connection with which defendant and persons associated, or claimed to be associated, with defendant are mentioned. Also with respect to the stationing of Texas Rangers in Duval County," —the headlines here of July 13; the same thing—"Texas Rangers in Duval County. The investigation by the Attorney General of Texas and others of defendant and associates, and the affairs of Duval County and the enforcement of the law in such county. Also with respect to the impeachment of certain judicial and other officers thereof. Also with respect to many lawsuits filed on behalf of the State of Texas and the United States, and others against defendant and/or those associated with him." And the second dispatch here in the paper of July 13, 1956, Your Honor, deals with a lawsut in which Parr and associates are involved. "Reference is made to the clippings for full particulars. These publications, whether standing alone or when considered in connection with such affidavits, support, strengthen and confirm my views that there is so great a prejudice against de-

fendant in the Corpus Christi Division that he cannot obtain a fair and impartial trial there in this case."

That is the written opinion.

Then on May 16, 1955 Judge Kennerly, from the bench of this Court here, delivered this opinion orally:

"There were several hundred—I didn't count them, and there may have been five or six hundred—clippings from two daily papers in Corpus Christi.

"All of these I considered as carefully as I knew how to consider them, and I found myself settled on one opinion about whether the case should be tried in the Corpus Christi Division. I am doubtful that any Judge in this District, or any other District, reviewing the record as I did, would have reached any other conclusion, and that is that I reached the conclusion that the case should not be tried in Corpus Christi and that defendant's motion for change of venue should be granted. In reaching that conclusion, or rather in examining the record, I reached this further conclusion, that I gravely doubt whether in the administration of justice generally, the case should be tried in this District at all. I reached that conclusion not as favoring either the Government or the defendant but more from the standpoint of the Judge who is charged with the administration of justice in this District. But when I came to examine the law I found that I was without power to transfer the case outside of the Southern District of Texas. "If I"—skipping a couple of lines here which are not pertinent —"If I had had that authority I would have sent it to

Amarillo, Sherman or Texarkana or some of those places as far removed from the scene of the troubles as I could, or as I could find. I would have done that not, as I say, to favor either the defendant or the Government, but because I feel that justice in the case would be the best administered by transferring the case to one of those places. As I stated, I could not do that as I understand the law."

Now these defendants are moving "in the interest of justice" to send this case to Corpus Christi, into that hot-bed of political turmoil of prejudice and counter-prejudice. As Judge Kennerly puts it, he does not believe that any judge in this District reviewing the record that he did would reach the conclusion that it should be tried in Corpus Christi, but rather the case should be tried as far removed from Corpus Christi as possible. Considering these words of Judge Kennerly, when we prepared this indictment, considering the proof that the Government would have to make of mail fraud and the availability of witnesses, we brought this case in the Houston Division which is not too far removed from Corpus Christi in convenience, but yet is as far removed as possible from the hot-bed of the trouble, and also is as far removed from the infection of publicity in newspaper prejudice, in accordance with the affidavits of circulation of these papers, as we were able to find. It is in the interest of justice, in the good administration of justice, and as Judge Kennerly says, not to favor the defendants or the prosecution, that this case should not be tried in the Corpus Christi Division.

I know that Your Honor would not hesitate to make a decision to send the case to the Corpus Christi Division

if Your Honor felt that under the law he was compelled to do so. But there is no law which compels this Court to send it to Corpus Christi, because, first of all, we think the indictment, under the law, prohibits it being transferred anywhere but Houston. Secondly, the question of whether it is in the interest of justice is squarely in the discretion of the Court. For this Court to rule in the interest of justice to send the case to Corpus Christi, when Judge Kennerly has delivered this opinion in this very courtroom, from this bench, would seem to me to be inexplicable and not in the interest of justice and the administration of justice generally.

So, Your Honor, we submit, for these reasons, that the motion for change of venue should be denied; the motion for discovery should be denied except insofar as it is permitted by Rule 16, and we have tendered that.

In addition I am informed by my co-counsel here that we do have one signed statement by Jesus Oliveira, one of the defendants, and we correct the record in that respect.

That is all, however.

In regard to the bill of particulars we submit that should be denied and the indictment is plainly sufficient under the rules and the model form of the indictment as set forth in the Criminal Rules.

Thank you for your patience, Your Honor.

The Court: We will take a ten minute recess.

(Short recess.)

The Court: Please be seated, everyone.

Off the record.

(Discussion off the record.)

Mr. Sharpe: May it please the Court, I would like to reply to the argument of Government counsel in reverse order. In other words, I would like to take up this question of the motion to transfer the venue question first.

Mr. Wilkey first stated that our views of this matter overlooked the language of the indictment. I think that the—and he emphasized to the Court that the language of the indictment placed the venue in the Houston Division. I think the answer to that argument is right in Rule 21(b) itself. That used to be the rule before 1946, that there was no transfer for this sort of a reason but now the rule clearly says the Court upon motion of the defendant shall transfer the proceeding as to him to another District or Division if it appears from the indictment or information—and here, or from the bill of particulars—that the offense was committed in more than one District or Division, and so on.

Now, then, the importance of the bill of particulars in this case comes in this way: Analyzing this indictment, we already have 15 of these 20 counts that could be prosecuted in the Corpus Christi Division just from the face of the indictment. We have 15—I beg your pardon—14 substantive counts that allege the placing in the mail of a letter at Houston addressed to a place in the Corpus Christi Division. Admittedly certain overt acts of the

conspiracy count, Count 20, are placed or could be placed, occurred in the Corpus Christi Division, so the only question we really have on the bill of particulars is as to those five counts which alleges that a letter was taken from the mail here in Houston and a bill of particulars, the letters themselves, should show that they were likewise mailed in the Corpus Christi Division. So, when you put these two things together, that is, the indictment fixing venue and the bill of particulars, that answers the argument there as to where things took place, and it's not up to the District Attorney or grand jury—I say that in deference—to decide this issue any more. It is up to the Court to decide that.

That is the fact, Your Honor, that the Government's position would have been good ten years ago. It is not today. In other words, the decision is not solely with the District Attorney and the grand jury; it is up to the Court on a proper showing, if the Court feels that where a motion is filed that it is in the interest of justice and that the offense could be prosecuted or tried, or was committed in either of two divisions.

Now, Mr. Wilkey has placed a great deal of weight on this Holbrook case by the Fifth Circuit Court of Appeals, which involved an income tax evasion prosecution. Now, Your Honor, in the reply brief that I prepared yesterday afternoon, that I filed with Your Honor this morning, I discussed not only that case but about three or four or possibly five others all involving income tax evasion prosecutions, and I think three or four of them were up in the State of Tennessee.

One of those cases in particular which we have cited in the brief, points out that on venue those cases go off on this question: That a tax collection district is not the same thing as a Federal Judicial District. We all know that. But that approximately one-third of the persons in the United States resided in a tax collection district that was different from a Judicial District in which the collector had his headquarters and therefore, where the statute provides that a return shall be filed with the collector it might be in a Judicial District which is different from that of the tax collection district in which he resides. So, those cases simply are not analogous and the Government has made no attempt here today to answer us on either the Holbrook case or the White case, which are mail fraud cases which are in point with the arguments. I think an analysis and a reading of those cases, the Holbrook case and the others, will show that they deal with a completely different type of case and in the last one, United States vs United States District Court, which we have cited in the brief, which was a mandamus proceeding by the Attorney General to require a Federal District Judge who had refused to accept jurisdiction of a case which had been transferred to him to accept it, the original transfer. That case throws a lot of light on it. It was an income tax evasion case where the bill of particulars showed just what he have claimed substantially in this case as to residence of the witnesses and the acts and so forth that were engaged in by the defendants. I'd like to say this, just parenthetically, and I certainly would want the Government to reply to it if they wanted to and the Court wanted to give them an opportunity. I don't believe that the evidence in this case will show

a single act of any defendant in the Houston Division of this Court. It's completely on the theory that they, in the Corpus Christi Division, in Duval or possibly Jim Wells County, caused this delivery or caused on a legal theory the placing or the receiving of letters in the mails up here.

Now, on this question of records. I don't believe the Government means to take the position here, and assuming records were in Duval County of Jim Wells County to start with—and they were, the facts are undisputed on that from the witnesses here this morning—that the Government can seize those records and take them to Houston or San Antonio, or any place else and fix venue. I don't think that's their argument, but it is in a left-handed way conferred here. These facts in our case, in these affidavits and this testimony, show that the bank records and the School District records belong there. They belong in Duval County and Jim Wells County and the Government has only temporary custody of them. I don't believe the Government has any legal right whatsoever in those records, certainly they don't have a property right; the Government does have a right to use them as evidence, but simply by the act of removing them from the place where they belong, at the business headquarters of the School District and the banks, doesn't mean that that has any weight or bearing on the question of venue.

Now, counsel has cited in their brief and referred to it in argument, this in re Texas Company case, and we've cited it in our brief too, and pointed out that case simply holds that where a case is pending before a Fed-

eral grand jury, investigation is just started, no indictment has been returned, that a defendant who might be involved in that case comes into the court and requiring the discharge of the grand jury. That's all that case holds. That's a good rule. And the Court says that the grand juries ordinarily are within the control of the trial courts anyway.

And I think that one holding of the Texas Company case is this, although the Court didn't flatly say so, the Court said the issue is this: That within the meaning or Rule 21 basic a person is really not in position to move for a transfer from one District or Division to another until they actually become a defendant. At least that would be one construction that could be made of the ruling.

Now, I just conferred with Mr. Foreman about the proposition of the possibility of another motion being filed if this case is transferred to Corpus Christi, a motion to transfer the case to Laredo, and he has authorized me to say that the Government can forget that part of it if they want to; that there won't be any such motion as that.

And insofar as some of the other matters contained in the brief of the Government, their argument is "I don't believe that these eight individual defendants ought to be convicted—these defendants who are identified in this case and who weren't identified in the tax evasion case—should be convicted just on the remark of counsel or statements in the briefs as to being henchmen, or associates, or supporters, or anything like that. These other

cases hold that they are entitled to the presumption of innocence in that situation.

Now, that's about all I am going to say on the question of the motion for transfer. I do want to say this on the question of the motion for discovery, and I'm going to let it rest there.

We are relying on the *Bowman Dairy Company* case. We have set out the excerpts from it in our brief and our view is just basically this, which really is including in three sentences in that opinion. "It was not intended by Rule 16 to give a limited right of discovery and then by Rule 17 to give the right of discovery in the broadest terms. They must be given their ordinary meaning to carry out the purpose of establishing a more liberal policy." Counsel has talked about a limited discovery under these rules. This is the Supreme Court which says "a more liberal policy for the production, inspection and use of materials at the trial." And here is the sentence we rely on: "There was no intention to exclude from the reach of process of the defendant any material that had been used before the grand jury or could be used at the trial."

Now, I appreciate the fact that the Court was discussing both Rules 16 and 17 there and, as counsel has correctly stated, I don't disagree with him as to the fact that 17 is largely procedural, but I do say that they have got to be considered together.

On the question of our bill of particulars, our motion for bill of particulars, counsel has stated that we made 332 separate requests and maybe we have but I'd like

to show the Court the reason for it. This indictment has 20 counts in it. The first 19 are practically all alike except the scheme is fully stated in the first count. Now we have done this just as a matter of precaution, we have repeated eight of our requests, the identical requests on these counts, nineteen times. That is 152 of them just right there. I suppose I could have taken the risk of just saying as to Counts 2 through 19 we repeat these and adopt them but I didn't do that, so that is roughly half—that constitutes roughly half of our requests. Then again I want to call the Court's attention to the number of subdivisions in this indictment. It seems to me the first paragraph has 17—the first count has 17 paragraphs in it. The next counts, 2 through 19, have two sections each, which would be 38, and the final conspiracy count has at lead paragraph and 12 overt acts, would be 13. That adds up to 68 subdivisions of the Government's indictment. So I say the least—actually I think that's just about, I think, less than three requests that we've made on each paragraph; so it is not unduly long under the circumstances. In looking at these requests the Court can tell that we have repeated requests, we didn't know we didn't know at the time we wrote this motion that they were going to give us these letters, for example, and we have asked for such facts as the place where the letter was mailed and who mailed it, or who took it out of the mail. I think we should certainly be entitled to all three of those in any event. But, be that as it may, I want to explain the fact that we really haven't made an unreasonable request here and just judging from the numbers of them.

Now, I want to make my position clear that I am not asking for matters that are evidentiary. I recognize that rule. I know that if we just came in here and tried to take a look at the Government's case from the standpoint of getting their evidence, we couldn't do it. But I am relying on these cases which hold that where an indictment is framed in such general language as this one is, that we are entitled to a bill of particulars which gives us ultimate facts. It doesn't have to give us the names of witnesses or testimony or how the items are to be proved, but just for example, just one, where they allege here that BISD checks were drawn on the depository bank and were issued to persons and concerns for services and materials furnished to the BISD, here are the ultimate facts we are entitled to there: It is true that this annual report of the school board is on file at Austin, with the Texas Education Agency, approximately eight thousand entries in that thing. We don't know over a period of four and a half years which one of those or what ultimate facts the Government will rely on; that's my point. And I certainly think this, that the least they could do, where they've got a check involved payable to a fictitious person or to a person or concern for services and materials that they say the BISD didn't get, is that on or about such and such a date A, one of the defendants, got that check or forged it or endorsed it, or whatever he did, and that B, C and D aided and abetted and they could say so. I mean those are the kind of requests that we are making here, ultimate facts; not testimony and not inference, and I know, as well as anybody I think, that we can't make the Government spread its entire case before us here. We are not thinking to do that. But just asking,

within reason, to get enough facts here to where we can prepare our defense in the matter.

If Your Honor please, that's all I'm going to say at this time for several reasons. One of them is that I do think that most of these matters that have been discussed here today are pretty well covered in the briefs. But I do have two little things that I would like to take up, and I have discussed one of them with Mr. Wilkey.

When I first filed our motions here I had not then attached the affidavits of these various persons to them and I left a blank in there for the number of witnesses we would have on the trial, which is included in one of the affidavits, said there would be at least 50, and I left a blank for the names of the persons whose affidavits would be attached. So that I can have that motion in complete form I would like to fill those in, and the names of the defendants, I can find that and do that with the Court's permission.

The Court: All right.

Mr. Sharpe: And the other thing is this, Your Honor. There are just a few matters that I haven't had a chance yet to put in written form. I worked yesterday afternoon from two to nine o'clock on just this one reply brief that I submitted to Your Honor today. I would say there are probably a dozen or maybe fifteen of those cases that the Government cited that I haven't had a chance to read thoroughly. I'd like to do this if it is satisfactory with the Court: I'd like to go home and file a reply brief within the next few days, a brief reply, to those matters that are not actually in writing. I can get it to you Mon-

day, Your Honor. Of course, with the right of the Government to do the same thing.

The Court: All right.

Mr. Sharpe: Thank you, Your Honor.

The Court: Now, there were some questions—I don't know what I am going to do, of course, until I give it more consideration, but in the event this should be in shape to try, what are your commitments? I had better ask you that first, Mr. Foreman.

Mr. Foreman: I was just discussing it with Mr.—

The Court: Wilkey?

Mr. Foreman: —Wilkey, during the short recess.

The Court: An international lawyer like you, we have got to fight it out each time you have a case as to which country you will be in.

Mr. Foreman: I am glad the Court raised the point at this time, because next week I will be having to tell a judge in Brooklyn about my commitments, and this is the only case I have that I think will take any long length of time.

The Court: Are you still estimating 90 days?

Mr. Foreman: I wouldn't know, Your Honor.

The Court: That Sharpe is a fast worker. Sometimes you are, and sometimes you are not.

Mr. Foreman: Well, Mr. Wilkey says he thinks it will take at least three weeks, which is conservative, I think.

The Court: Unless you have some agreements on this vast number of documents.

Mr. Foreman: We will try to shorten it, but Mr. Wilkey stated he was going to request a setting for May 22, or October, which, so far as I am concerned will be all right, just so I know it now, before I go East.

The Court: It will all be tentative because I don't know what I am going to do.

Mr. Foreman: At any rate I can estimate the length of the case and tell the judge up there.

The Court: In Brooklyn?

Mr. Foreman: Judge Lebowitz, I think, is going to try this case.

(Discussion off the record.)

Mr. Wilkey: Your Honor, the Government would ask or suggest that a suitable week of October 22, October 29 or November 5, would be satisfactory. We have looked at the calendar and we think this case can be printed in there.

The Court: Well, one of the biggest problems I have is whether I am going to keep it here or send it to Corpus.

Mr. Foreman: You don't have to send it, you can take it, Your Honor.

Mr. Wilkey: I had this thought also, Your Honor—

The Court: Do you mean you want me to try it?

Mr. Foreman: I would just rather have you try it than anybody I know.

Mr. Wilkey: Yes, we think even if the venue is changed, the judge would remain the same, and there will be a jury in Corpus during those weeks, so if we could get a firm setting on the matter—

The Court: You mean a firm setting today?

Mr. Wilkey: Not today. I know that is impossible—

The Court: If it goes to Corpus Christi, of course I will have to favor the judge there. My clerk is fussing in an undertone that we've got a lot to do here, and we can't go to Corpus. I know he is very sincere, but I thought you liked Corpus.

The Clerk: That is all right, but you have got about four cases here.

Mr. Wilkey: I forgot to mention to the Court the inconvenience it would be to Mr. Foreman going to Corpus. His office is only a half a block from the court house here, and I think that should be taken into consideration by the Court. I think it should remain in Houston.

The Court: I think his office is way out at the end of Main Street now.

Mr. Foreman: Judge, I do more briefing, or did, until Dudley Tarlton closed his office a few weeks ago, in his office than I ever did in my own.

The Court: Who bought his library?

Mr. Foreman: It was handled by the Daughertys, and I don't know who bought it, but it is sold now.

The Court: Very well, I thank you.

Court will stand adjourned under the Rule.

335 ORDER OVERRULING MOTION TO QUASH, FOR BILL OF PARTICULARS, CHANGE OF VENUE, Etc., AND SETTING CASE FOR TRIAL NOV. 5, 1956

(Filed Aug. 6, 1956)

(Caption Omitted)

1. Motion to Quash and Dismiss the Indictment overruled and denied.

2. Motion for Bill of Particulars overruled and denied.

3. Motion for Change of Venue and to Transfer Proceedings to the Corpus Christi Division of the United States District Court for the Southern District of Texas, overruled and denied.

4. Motion to Produce and Permit Defendants to Inspect, Copy or Photograph Documents, Books, Papers, and Objects, granted in part and denied in part.

That part GRANTED is: All documents, etc., obtained by the Government by seizure or by process. The Government shall produce said documents in the Jury Room of Courtroom No. 1, of the United States District Court for the Southern District of Texas, at 10:00 o'clock A. M., Monday, September 24, 1956; and the attorney, or attorneys, for Defendants shall be permitted to inspect, copy, and/or photograph same in the presence of the United States Attorney and/or one or more Assistant United States Attorneys, and in the presence of either District Clerk, V. Bailey Thomas, or his Deputy, William H. Costa, or both.

Except as above granted, the Motion to Produce is overruled.

5. This case is hereby set for trial on its merits before me in the Houston Division of the United States District Court for the Southern District of Texas, on November 5, 1956, at 10:00 o'clock A. M.

Clerk will notify counsel.

ALLEN B. HANNAY
United States District Judge

August 6, 1956.

IN THE DISTRICT COURT OF THE UNITED
FOR THE SOUTHERN DISTRICT OF TEXAS

240

U.

Geo

LIST OF GOVERNMENT'S EXHIBITS

Filed, Dec. 18, 1956)

(DEPENDANTS' EXHIBIT #240)

NO.	DESCRIPTION
1	Annual Report of School Funds - Benavides - 1949-1950.
2	" " " " " - " - 1950-1951.
limited 3	" " " " " - " - 1953-1954.
4	" " " " " - " - 1951-1952.
5	" " " " " - " - 1952-1953.
6	Photostat of Depository Pledge Contract of B.I.S.D. - 9-1-49 ending 8-31-51
7	" " " " " - 9-1-51 " 8-31-53
8	" " " " " - 9-1-53 " 8-31-55
Limited 9	Various Entries From Gov't Ex Nos. 1, 2, 3, 4 + 5.
10	Various Entries from Gov't Ex Nos. 1, 2, 3, 4 + 5.
11	Certificates For Search of Birth Record of List of Names from yr. 1903-
12	Signature Card, 1st State Bank of Alice, George B. Parr - 9/
13	" " " " " D. C. Chapa - 5/10/
14	" " " " " D. C. Chapa & Mrs. D. C. Chapa
15	" " " " " O. Carrillo, Sr. - 5/
16	" " " " " Diego Heras - 3/16/
A	Check No. 29561 - To Martin C. Wade, $142.00 - 6/
B	" " 29511 - " Alfredo L. Alcocer, $215.50 - 6/
C	" " 29388 - " Leonardo T. Parr, $756.50 - 5/
D	" " 29512 - " Jose L. Mendezma - $ - 6/
E	" " 29562 - " Arturo S. Licona - $284.50 - 6/
17 F	" " 29557 - " Pedro C. Medrano - $791.50 - 6/
G	" " 29559 - " Julian R. Toledano - $856.90 - 6/
H	" " 29558 - " Leandro G. Villarreal - $695.00 - 6/
I	" " 29130 - " Ricardo M. Lozano - $893.30 - 3/
J	" " 29129 - " Jose M. Altamirano - $987.65 - 3/
M	" " 29392 - " Arcadio F. Gutierrez - $705.95 - 5/

For Limitations See Page 29

(CHECK MARK (✓) INDICATES EXHIBIT ADMITTED)

Wm. M. Taylor
COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A.
vs
George P. Parr, et al
CR NO. 2829
Defts
EXHIBITS

NOS	Cont'd	DESCRIPTION
	L	Check No. 29131 - To Antonio T. Fernandez - $[illegible] - 2/28/51
	M	" " 2939 - [illegible] - $646.75 - 5/1/51
17	N	" " 2938 - [illegible] - $745.80 - 5/10/51
	O	" " 2935 - [illegible] - $[illegible] - 5/12/51
	P	" " 2[illegible] - [illegible] - [illegible] - 5/30/51
	Q	Check No. 2898 - [illegible] - $[illegible] - 3/2/51
	R	2899 - [illegible] - $[illegible] - 3/2/51
	S	2899A - [illegible] - $[illegible] - 3/2/51
	T	2929 - [illegible] - $[illegible] - 3/31/51
	22	Certified Copy of Executed Acceptance of Directors of Texas State Bank at Alice, Alice Texas (January 6, 1949, 1/20/50, 1/22/51, 1/16/52, 1/28/54)
	23	Certified Copy of Amendment To Articles of Association of Texas State Bank at Alice, Alice Texas, 2/15/50 (Certificate of Increase of Capital [illegible])
	24	Vaello Sales Co. [illegible] - Veteran Dep. - St #46
	25	[illegible] - Land Trail - St #47
	26	Photograph of [illegible] Jr. Memorial High School
	27	Minutes of Special [illegible] Meeting of the Board of Trustees, (December 7, [illegible])
	A	Check No. 29695 - [illegible] - $20.85 - 7/31/51
	B	29847 - [illegible] - $243.95 - No Date
	C	29[illegible] - [illegible] - $243.95 - 6/30/51
	D	29[illegible] - [illegible] - $243.95 - 5/25/51
	E	29[illegible] - [illegible] - $243.95 - 4/30/51
	F	29[illegible] - [illegible] - $243.95 - 3/31/51
		[illegible] - $243.95 - 2/28/51

[illegible] to Page 29

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A

vs

George B. Parr, et al

CR NO. 1889

EXHIBITS

NOS	DESCRIPTION
~~52~~	Tax Receipt No. 49[illegible] Hospital Ranch
53	" No. A [illegible]
54	" No. A [illegible]
A	Gilcrease Oil Co. Check [illegible]
~~55~~ B	Tax Receipt No. A 279 [illegible]
C	Statement No. A 2963
A	Sid Mayo Ranch Check No. [illegible]
~~56~~ B	Tax Receipt No. A 3987 [illegible]
C	[illegible]
A	Gasoline Prod. Co. Check No. [illegible]
57 B	Tax Statement [illegible]
C	Tax Receipt No. 67 [illegible]
D	Voucher Check No. [illegible]
A	Gasoline Prod. Co. Check No. [illegible]
B	Voucher Check No. [illegible]
58 C	Tax Statement No. A 2[illegible]
D	Tax Receipt No. A 2[illegible]
59 A	Pitser Check No. 43[illegible]
B	Tax Receipt No. [illegible] Pitser
60 A	J. T. Dunn Check No. [illegible]
B	Tax Receipt No. A 313 [illegible] J. T. Dunn
61	Pitser Check No. 3711 [illegible]
62	" " 3874 To [illegible]
A	[illegible] Check No. [illegible]
63 B	Tax Receipt No. 93 [illegible]
C	" Statement [illegible]
D	Notification [illegible]
	For Imp. Returns [illegible]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION.

U. S. A.

vs.

George E. Parr, et al

CR NO. 2829

EXHIBITS

NOS.	DESCRIPTION
	A Canceled Check No. 3755 to B.I.S.D. - 10/2/53 - $ 365.38
64	B Tax Receipt No. 5616 to B.I.S.D. - 12/1/53 - $ 368.38
	C Tax Statement No. 5616 - B.I.S.D. - 9/1/53 - $ 375.90
65	Pan Am [illegible] - B.I.S.D. - 2/20/53 - $ 2,540.24
66	Ralph [illegible] - B.I.S.D. - 2/20/53 - $ 6,174.58
67	Iberia [illegible] - B.I.S.D. - 10/21/53 - $ 5,201.10
68	Texas [illegible] - B.I.S.D. - 2/20/53 - $ 6,525.35
69	[illegible] - B.I.S.D. - 2/20/53 - $ 8,278.25
72	[illegible] No. 7244 - 9/14/53 - $ 1,591.24
71	Signature Card, San Diego State BR, D.C. Chapa - 11/24 -
72	Oscar Carrillo
73	By C. Carrillo Sr. - 3/3/53
74	Ledger Sheet (Back) - B.I.S.D. Petty Cash, by D.C. Chapa - 1951-1953
A	Original Deposit Slip #17 - B.I.S.D. - 12/1/51 - $ 687.74 - [illegible]
B	30 - " - 12/24/51 - $ 167.39 - "
C	46 - " - 1/3/52 - $ 83.97 - "
D	1 - " - 1/9/52 - $ 158.30 - "
E	38 - " - 1/31/52 - $ 321.46 - "
75 F	22 - " - 5/12/52 - $ 126.64 - "
G	8 - " - 10/1/53 - $ 173.69 - "
H	15 - " - 10/15/52 - $ 220.95 - "
I	37 - " - None - $ 98.45 - "
J	38 - " - 10/9/52 - $ 266.30 - "
K	10 - " - 1/23/53 - $ 439.17 - "
L	16 - " - 2/2/53 - $ 244.60 Texas $ 44 Bk
M	12 - " - 2/3/53 - $ 249.82 - San Diego $ 1 Bk

For Plaintiffs

COURT REPORTER

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

VS

George B. Parr, et al

CR NO. 12829

EXHIBITS

NOS.		DESCRIPTION	
	A	Bank Ledger Sheet - D.C. Chapa	- 12-20-51 - $127.11
	B	" " "	- 1-29-52 - $110.97
	C	" " "	- 3-4-52 - $268.04
	D	" " "	- 4-5-52 - $162.53
	E	" " "	- 5-13-52 - $7.40
	F	" " "	- 6-23-52 - $2.08
	G	" " "	- 8-4-52 - $2,918.44
	H	" " "	- 9-4-52 - $961.12
76	I	" " "	- 10-3-52 - $136.19
	J	" " "	- 11-3-52 - $480.42
	K	" " "	- 12-20-52 - $183.15
	L	" " "	- 2-27-53 - $295.47
	M	" " "	- 4-27-53 - $37.46
	N	" " "	7-2-53 - $392.19
	O	" " "	8-5-53 - $611.67
	P	" " "	9-22-53 - $152.50
	Q	" " "	10-16-53 - $22.20
	R	" " "	12-2-53 - $1,912.03

	A	Original Deposit Slip - Supplemental Ins. D.C. Chapa	9/5/52 - $1,794.40
	B	" " "	- 9/10/52 - $320.16
	C	" " 3 "	- 9/18/52 - $3,658.75
	D	" " 1 "	- 9/18/52 - $419.61
77	E	" " 10 "	- 10/2/52 - $504.49
	F	" " 24 "	- 10/4/52 - $100.27
	G	" " 35 "	- 10/6/52 - $1,242.10
	H	" " 24 "	- 10/9/52 - $1,432.00

Explanations see Box 29

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

vs

George B. Parr, et al

CR NO. 12529

Gov. 46.

EXHIBITS

NOS.	Gov'd.	DESCRIPTION	
✓	77	I Original Deposit Slip #11 Sun Empire Ins. Co. Chapa	10/16/52 $25256
✓		J " " 25 "	10/21/52 $3,000.00
✓		K " " 47 "	11/3/52 $150.00
✓		L " " 46 "	11/3/52 $451.80
✓		M " " 34 "	11/13/52 $400.00
✓		N " " 41 "	11/14/52 $1,125.00
✓		O " " 21 "	11/25/52 $460.04
✓		P " " 35 "	12/1/52 $300.00
✓		Q " " 17 "	12/3/52 $406.20
✓		R " " 9 "	12/7/52 $532.15
✓	77	S " " 23 "	12/12/52 $445.60
✓		T " " 26 "	12/26/52 $263.25
✓		U " " 5 "	12/31/52 $300.00
✓		V " " 45 "	1/17/53 $408.96
✓		W " " 10 "	1/21/53 $42.75
✓		X " " 9 "	2/2/53 $451.50
✓		Y " " 3 "	2/11/53 $600.00
✓		Z " " 8 "	2/18/53 $138.46
✓		AA " " 36 "	2/11/53 $129.20
✓		BB " " 35 "	2/11/53 $145.71
✓		CC " " 26 "	2/26/53 $500.00
✓		DD " " 13 "	3/4/53 $481.50
✓		EE " " 31 "	3/6/53 $3,271.17
✓		FF " " 37 "	3/23/53 $2,500.00
✓		GG " " 48 "	3/25/53 $158.60
✓		HH " " 44 "	3/25/53 $345.22
✓		II " " 21 "	4/1/53 $401.50

For Limitations See Page 29

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

VS

George B. Barr, et al

CR NO. 12829

Gov. 4½.

EXHIBITS

NOS. Cont'd.:	DESCRIPTION
JJ	Original Deposit Slip MHE San Diego St. Bk. D.C. Chgs. - 4/8/53 - $150.00
KK	" " 6 " " " " " - 4/24/53 - $ 78.90
LL	" " 5 " " " " " - 4/24/53 - $ 301.42
MM	" " 39 " " " " " - 4/24/53 - $ 300.00
NN	" " 30 " " " " " - 4/5/53 - $ 181.80
OO	" " 29 " " " " " - 5/8/53 - $ 300.00
PP	" " 9 " " " " " - 5/16/53 - $ 245.69
QQ	" " 43 " " " " " - 5/25/53 - $ 90.00
RR	" " 13 " " " " " - 6/1/53 - $ 451.80
SS	" " 45 " " " " " - 6/1/53 - $ 200.00
TT	" " 32 " " " " " - 6/15/53 - $ 75.00
UU	" " 41 " " " " " - 6/19/53 - $ 339.41
VV	" " 5 " " " " " - 6/11/53 - $ 232.00
WW	" " 36 " " " " " - 7/1/53 - $ 345.87
XX	" " 37 " " " " " - 7/2/53 - $ 443.70
YY	" " 12 " " " " " - 7/5/53 - $ 19.40
ZZ	" " 11 " " " " " - 7/8/53 - $ 151.80
AAA	" " 39 " " " " " - 7/15/53 - $ 1,167.80
BBB	" " 36 " " " " " - 7/17/53 - $ 209.96
CCC	" " 42 " " " " " - 7/15/53 - $ 53.80
DDD	" " 49 " " " " " - 7/31/53 - $ 1,652.86
EEE	" " 44 " " " " " - 5/6/53 - $ 481.80
FFF	" " 27 " " " " " - 5/15/53 - $ 211.06
GGG	" " 33 " " " " " - 2/24/53 - $ 600.00
HHH	" " 49 " " " " " - 5/21/53 - $ 1,426.00
III	" " 20 " " " " " - 9/3/53 - $ 206.80
JJJ	" " 15 " " " " " - 7/3/53 - $ 300.00

For Continuation See Page 29

Wm. B. Eads

COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

VS

George R. Arr. et al

CR NO. 12829

Gov. #'s.

EXHIBITS

NOS. Gov't	DESCRIPTION
TTT	KKK Original Depos. Slip #24 San Diego St. Bk. - D.C. Chapa - 2/19/53 - $100.00
LLL	" " " 30 " " " " - 2/21/53 - $43.91
MMM	" " " 26 " " " " - 2/19/53 - $350.22
NNN	" " " 41 " " " " - 10/1/53 - $451.80
OOO	" " " 45 " " " " - 10/5/53 - $498.98
PPP	" " " 50 " " " " - 10/23/53 - $2,000.00
QQQ	" " " 49 " " " " - 10/23/53 - $254.92
RRR	" " " 23 " " " " - 11/2/53 - $451.80
SSS	" " " 44 " " " " - 11/9/53 - $104.52
TTT	" " " 16 " " " " - 11/17/53 - $322.10
UUU	" " " 30 " " " " - 12/2/53 - $451.80
VVV	" " " 50 " " " " - 12/17/53 $254.55
WWW	" " " 22 " " " " - 1/6/54 - $100.00
XXX	" " " 24 " " " " - 1/7/54 - $200.00
YYY	" " " 15 " " " " - 1/15/54 - $109.64
ZZZ	" " " 37 " " " " - 2/2/54 - $609.40
AAA	" " " 46 " " " " - 2/3/54 - $1,500.00
BBB	" " " 9 " " " " - 2/9/54 - $2,052.31
CCC	" " " 36 " " " " - 2/20/54 - $300.00
DDD	" " " 35 " " " " - 2/24/54 - $182.17
EEE	" " " 43 " " " " - 2/25/54 - $25.62
FFF	" " " 41 " " " " - 2/25/54 - $446.54
78	Liability Ledger Sheet, San Diego St. Bk. - D.C. Chapa - 1st Date - 3/20/51
79	" " " " " " " - Balance: $39,955.00

For Limitations See Page 29

Wm. R. Sarta

COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

VS

George B. Parr, et al

CR NO. 12829

EXHIBITS

NOS.		DESCRIPTION
Not Admitted	A	Check No. 14-760 by G. C. Caspa - 4/30/55 - $50.00
	B	" " " " - 5/4/55 - $50.00
80	C	" " " " - 4/18/55 - $6.00
	D	" " " " - 4/27/55 - $5.00
	E	" " " " - 4/30/55 - $20.00
Not Admitted	A	Final Permanent Record of Prof. Ed. in Nursing - Incarnate Word College - 1950-1951
81	B	Formal Application for Admission - Incarnate Word College - Nita Elda Garza
Not Admitted	C	Permanent Record Card Edinburg Regional College - Nita Garza
	D	" " " Texas College of Arts & Ind. - Nita Garza
Not Admitted	A	Transcript of Record of Maria Elva Garcia - Texas State College for Women
82	B	Letter, 10/29/56 - Signed Frances M. Green
	C	Certification of Test Scores - 11/2/56 - Doris W. Gray
83	A	Student Final Record, Nita Garza - Brackenridge Hospital
	B	Application For Admission - Nita Garza - 2/16/51
84	A	Student Final Record, Elva Maria Garcia, Brackenridge Hospital
Not Admitted	B	Application For Admission - Elva Maria Garcia - 7/14/51
	A	Original Deposit Slip #5 - Texas State Bk - Is Local Mount - 1/2/52 - $1,764.32
	B	" " " 7 " " - Texas State Accts - 1/2/52 - $13,815.50
	C	" " " 6 " " - " " " - 1/2/52 - $13,815.50
85	D	" " " 8 " " - Local Mounts - 1/1/52 - $1,031.45
	E	" " " 4 " " - Tax Coll. Accts - 1/1/52 - $600.98
	F	" " " 22 " " - State & County - 1/16/52 - $9,476.00
	G	" " " 23 " " - Texas State & County - 1/16/52 - $9,476.00
	H	" " " 21 " " - Local Mounts - 1/16/52 - $625.91
	I	" " " 5 " " - " " Accts - 1/16/52 - $58.66
		For Limitation of Liability

CLERK

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A.

VS

George B. Parr, et al

CR NO. 12529

Gov't's. EXHIBITS

NOS. Cog'd.		DESCRIPTION	
85	J	Original Deposit Slip #7 Texas State Bk. - U.S.D. - Tax Coll Acct.	1/21/52 - $376.21
	K	" " " 8 " " " "	1/24/52 - 597.49
	L	" " " 10 " " " "	1/31/52 - 8751.18
	M	" " " 1 " " " "	2/9/52 - 8116.63
	N	" " " 50 " " " "	State Co. Acct. 2/14/52 - $10,585.00
	O	" " " 1 " " " "	Free " " " - $10,585.03
	P	" " " 39 " " " "	Interest Banking - 2/19/52 - $40,000
	Q	" " " 30 " " " "	Dem Local Maint. 2/19/52 - $50,000.00
	R	" " " 31 " " " "	Free " " " - 2/19/52 - $50,000.00
	S	" " " 8 " " " "	Local Maint. 2/20/52 - $464.84
85	T	" " " 2 " " " "	Tax Coll A/c 2/26/52 - $765.48
	U	" " " 3 " " " "	" " " - 3/5/52 - $183.04
	V	" " " 24 " " " "	Original Deposit Slip #1 3/18/52 - $4,598.60
	W	" " " 2 " " " "	Tax Coll A/c 3/19/52 $325.94
	X	" " " 35 " " " "	Interest Banking Fund 3/20/52 - $4,000.00
	Y	" " " 29 " " " "	State Available 3/21/52 - $5,297.50
	Z	" " " 30 " " " "	Free " " " 3/21/52 - $5,297.50
	AA	" " " 38 " " " "	Local Maint. 3/26/52 - $60.18
	BB	" " " 12 " " " "	Tax Coll Acct. 3/25/52 - $61.86
	CC	" " " 5 " " " "	Local Maint. 4/15/52 - $565.69
	DD	" " " 14 " " " "	Tax Coll Acct. 4/17/52 - $45.89
	EE	" " " 25 " " " "	State Sinking Fund 5/6/52 - $2,250.00
	FF	" " " 24 " " " "	Local Maint. 5/14/52 - $7,558.14
	GG	" " " 33 " " " "	Free " " " 5/14/52 - $5,791.70
	HH	" " " 32 " " " "	Local Maint. 5/15/52 - $1574.07
	II	" " " 35 " " " "	" " " 5/15/52 - $104.70
	JJ	" " " " " " " "	5/26/52 - $12,000.00

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A.
vs
George B. Parrott et al

CR NO. 12829

EXHIBITS

MOB. Conf'd.		DESCRIPTION	
85	KK	Original Deposit Slip #8 from State Bk. B.T.S.B.	from Local Mark. 7/20/52 $4,112.58
	LL	" " 44	State Avenue 7/21/52 $13,773.50
	MM	" " 45	from " 7/21/52 $13,773.50
	NN	" " 33	State Avenue 7/21/52 $5,297.50
	OO	" " 34	from " 7/21/52 $5,297.50
	PP	" " 2	Ice Cell A.C. 7/17/52 $1,417.25
	QQ	" " 4	7/17/52 $261.93
	RR	Individual Credit [illegible]	B.C.C.
	SS	Original Deposit Slip [illegible]	from State Bk. B.T.S.B. State Ave. 7/21/52 $5,297.50
	TT	" " [illegible]	from " " "
	UU	" " 10	Regional Mark. 7/21/52 $40,000.00
85	VV	" " [illegible]	from " " $30,000.00
	WW	" " 3	Ice Cell A.C. 7/21/52 $1,407.25
	XX	" " 2	State Avenue 7/21/52 $1,761.45
	YY	" " 6	from " " "
	ZZ	" " 13	Local Mark. 7/21/52 $167.93
	AAA	" " 41	7/14/52 $10,000.00
	BBB	" " 39	State Co. " $16,000.00
	CCC	" " 42	from local Bank " $5,000.00
	DDD	" " 40	State Co. " $6,000.00
	EEE	" " 15	State Avenue 7/21/52 $4,230.00
	FFF	" " 16	from " " "
	GGG	" " 17	Local Mark. 7/21/52 $6,000.00
	HHH	" " 14	" " 7/15/52 $695.59
	III	" " 22	Bank Original Dep. Slip #1 7/21/52 $6,000.00
	JJJ	" " 21	Ice Cell A.C. 7/14/52 $4,417.31
	KKK	" " 1	7/21/52 $19,976.46

[signature]
COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES

FOR T E SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

vs.

George B. Parr, et al

CR NO. 12829

Gov. #'s.

EXHIBITS

NOS.	Cont'd.	DESCRIPTION
85	LLL	Original Deposit Slip #12 Texas State Bk - B.C.S.B. - Tax Coll. - [illegible]
	MMM	" " " 33 " " " " Local Maint. "
	NNN	" " " 31 " " " " Tax Coll. - " $24,426.87
	OOO	" " " 32 " " " " Local Maint. - 11/6/52 - $30,000.00
	PPP	" " " 38 " " " " Tax Coll. - 10/31/52 - $15,443.96
	QQQ	" " " 19 " " " " " 10/31/52 - $15,149.00
	RRR	" " " 34 " " " " Texas Local Maint. - 10/31/52 - $5,000.00
	SSS	" " " 25 " " " " Bond Coupon Payment Acct. - 10/31/52 - $5,000.00
	TTT	" " " 36 " " " " Tax & Sinking Fund - 10/31/52 - $35,000.00
	UUU	" " " 38 " " " " State Accnt. - 10/29/52 - $3,334.80
	VVV	" " " 39 " " " " Texas " " " "
85	WWW	" " " 37 " " " " Tax Coll. Acct. - 10/31/52 - $15,371.48
	XXX	" " " 47 " " " " Local Maint. 11/6/52 - $57.79
	YYY	" " " 22 " " " " " 11/3/52 - $38,000.00
	ZZZ	" " " 21 " " " " Texas " " " 11/3/52 - $31,000.00
	AAAA	" " " 10 " " " " Tax Coll Acct - 11/4/52 - $21,903.50
	BBBB	" " " 2 " " " " State Accnt - 11/4/52 - $3,100.50
	CCCC	Todaundeal Cashier's Check Fox Ferry 11/4/52 - $4.50 - Tax Coll. - B. & C.
	DDDD	Original Deposit Slip #41 - Texas State Bk - B.C.S.B. - Tax Coll. - 11/5/52 - $32,374.31
	EEEE	" " " 3 " " " " Texas State Accnt - 11/5/52 - $3,100.50
	FFFF	" " " 34 " " " " Local Maint. - 11/5/52 - $347.43
	GGGG	" " " 11 " " " " Tax Coll. - 12/5/52 - $38,931.71
	HHHH	" " " 36 " " " " Local Maint. - 11/26/52 - $1,200.50
	IIII	" " " 43 " " " " State Accnt. - 12/5/52 - $6,201.00
	JJJJ	" " " 44 " " " " Texas " " " 12/5/52 "
	KKKK	" " " 45 " " " " Tax Coll. - 12/22/52 - $13,679.09.
	LLLL	" " " 49 " " " " Local Maint. - 12/22/52 - $13,000.00

Wm. B. Cook

COURTROOM CLERK

(Continued on Page 114)

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A

vs

George B. Parr, et al.

CR NO. 12529

EXHIBITS

NOS.	Ord'd	Rec'd	DESCRIPTION
85			Original Deposit Slip of Texas Ind. Life Ins. Co. - 12/28/53 - $10,000.00
85	NNNN	50	Fiscer Local 12/14/53 "
	CCCC	2	State Co. " "
	A	20	Tax Coll. - 1/6/53 - $1,612.45
	B	41	Local Merch. 1/13/53 - $2000.00
		1	" 1/2/53 - $467.46
	D	11	" $571.40
	E	1	State Asses. " $1,301.20
	F		Fees " "
	G	15	Tax Coll. Asst. 1/21/53 - $470.24
	H	33	Local Merch. 2/2/53 - $23,000.00
	I	36	Fees " " $15,000.00
	J	49	State Const. 2/3/53 $0.00
	K	50	Tax " $5,300.00
86	L	20	State Asses. 2/16/53 - $7,234.50
	M	21	Fees " "
	N	21	Texas Ind. Life 2/20/53 - $10,000.00
	O	17	" " 2/25/53 - $10,000.00
	P	35	Local Merch. 2/26/53 - $12,000.00
	Q	24	Fees " "
	R	46	State Co. 2/5/53 - $2,103.00
	S	45	Fees " " $7,000.00
	T	12	Local Merch. 3/11/53 $14,500.00
	U	14	Tax Coll. 2/17/53 - $243.12
	V	16	Local Merch. 3/19/53 - $2,232.53
	W	14	" " $444.17
	X	20	State Asses. 2/18/53 - $

Lena Guerrero

COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A

VS

George B. Parr, et al

CR NO. 12829

Geo. #3

EXHIBITS

NOS.	Ent'd.	DESCRIPTION
86	N	Original Deposit Slip & 21 Items Stub No. 83 [illegible] Amt $76,650.00
	Z	" " 33 " " Total Amt. 4/24/53 $18,000.00
	AA	" " 32 " " " 4/24/53 $14,000.00
	BB	" " 15 " " Cash 4/24/53 $177.34
	CC	" " 30 " " Amt. 4/24/53 $440.40
	DD	" " 33 " " Amt Avail 4/24/53 $2,234.50
	EE	" " 33 " " Items " " "
	FF	" " 50 " " Cash Ckd 4/24/53 $315.65
	GG	" " 37 " " [illegible] 4/24/53 $17,665.00
	HH	" " 41 " " Total Amt. 4/24/53 $1,602.14
86	II	" " 13 " " [illegible]
	JJ	" " 12 " " Items " " $10,200.00
	KK	" " 13 " " [illegible]
	LL	" " 14 " " Items " "
	MM	" " 15 " " [illegible]
	NN	" " 36 " " Total Amt. [illegible] $7,151.96
	OO	" " 47 " " Items " " [illegible]
	PP	" " 46 " " Total Amt. [illegible]
	QQ	" " 38 " " Cash Avail 4/24/53 $2,167.50
	RR	" " 39 " " Items " " "
	SS	" " 45 " " Total Amt. 4/24/53 $1,497.15
	TT	" " 36 " " Cash Ckd. Avail 4/24/53 $16,976.26
	UU	" " 34 " " Interest Paid 7/1/53 $2,000.00
	VV	" " 35 " " Total Amt. " $7,200.00
	WW	" " 37 " " Items " " " $16,000.00
	XX	" " 19 " " Interest Paid 7/1/53 $2,500.00
	YY	" " 11 " " Cash Avail 7/24/53 $5,161.50

IN THE [illegible] COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

[illegible] A
vs
George H. Parr, et al CIV. NO. [illegible]

EXHIBITS

NOS.	CON'D	DESCRIPTION
[illegible]	[illegible]	[illegible]
AAA	1	[illegible]
BBB	11	[illegible]
CCC	21	[illegible]
DDD	31	[illegible]
EEE	41	[illegible]
FFF	5	[illegible]
GGG	50	[illegible]
HHH	33	[illegible]
III	34	[illegible]
JJJ	40	[illegible]
KKK	45	[illegible]
[illegible]	46	[illegible]
MMM	12	[illegible]
NNN	11	[illegible]
OOO	31	[illegible]
PPP	4	[illegible]
QQQ	6	[illegible]
RRR	30	[illegible]
[illegible]	37	[illegible]
[illegible]	[illegible]	[illegible]
UUU	36	[illegible]
VVV	45	[illegible]
WWW	33	[illegible]
XXX	2	[illegible]
YYY	21	[illegible]
ZZZ	31	[illegible]

[illegible]
COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

George B. Pace, et al } CR NO. 13,519

EXHIBITS

NOS.	CLK'D.	DESCRIPTION	
86	AAAA	Original Deposit Slip #21 from Lbr. Bk. of P. to Am. Nat'l. 10/26/53	$5097.50
	BBBB	" " 347	11/26/53 $1,039.00
	CCCC	" " 15	12/17/53 $5,097.50
	DDDD	" " 5	State Co. 12/23/53 $5,500.00
	EEEE	" " 10	State Nat'l. 10/30/53 $5,050.50
	FFFF	" " 38	" " $5,097.50
86	GGGG	" " 40	11/30/53 $1,039.00
	HHHH	" " 14	12/17/53 $5,097.50
	IIII	" " 4	State Co. 12/23/53 $5,500.00
	JJJJ	" " 1	Trust Dept. Nat'l. 11/1/53 $18,000.00
	KKKK	" " 3	Trust Dept. Nat'l. 12/23/53 $4,200.00
	LLLL	" " 11	11/53 $17,000.00
	MMMM	" " 7	Nat'l. 12/53 $16,500.00
	NNNN	" " 34	12/17/53 $17,000.00
	OOOO	" " 3	12/23/53 $17,000.00

87 {Photostat Copies of Deposit Slips received in Cause No. 20,636 - D.C. Chapa vs. State of Texas.

88 {Photostat Copies of Deposit Slips received in Cause No. 20,636 - D.C. Chapa vs. State of Texas.

89 {A Continental Cal. Co. Window Envelope Dated Dec. 19, 1952 - 36 Stamps
{B " " Rayon Envelope - Marketing Division.
{C Monthly Envelope - B.T.S.D. 12/9/52 - $139.18

90 Continental Cal. Co. Monthly Envelope B.T.S.D. 2-20-53 - $139.94

For Identification See Page 29

Wm. F. Carter
COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

VS

George B. Parr, et al. CR NO. 12829

Gov't's

EXHIBITS

NOS	DESCRIPTION
91	Contract [illegible]
92 A	Manila Envelope
B	[illegible]
93	[illegible]
A	[illegible]
B	[illegible]
C	[illegible]
D	[illegible]
94	[illegible]
95	[illegible]
96	[illegible]
97	[illegible]
98	[illegible]
99	[illegible]
100	[illegible]
101	[illegible]
102	[illegible]
103	[illegible]
104	[illegible]
105	[illegible]
106	[illegible]
107	[illegible]
108 A	[illegible]
B	[illegible]
109	[illegible]
110	[illegible]

For continuation see Page 29

Wm. B. Wells

COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A

VS

George B. Parr, et al

CR NO. 2829

Gov't's
EXHIBITS

NOS.		DESCRIPTION
✓	A	BISD Local Maint. Check #33836 to Mrs. C. Carrillo - 4/26/63 - $178.75
See Page 228+ Page 228	B	33803 "Reynaldo Chapa" - $180.00
✓	C	33854 "R. Chapa" - $225.10
✓ 109	D	33832 "Hilda C. Gonzalez" - $125.00
✓	E	33825 "D.C. Chapa" - $300.00
✓	F	33839 "A.G. Valerio" - $40.00
✓	G	33879 "Reynaldo Chapa" - $75.00
	A	BISD Local Maint. Check [illegible]
	B	25[illegible] "Catano" [illegible]
✓	C	25[illegible]
✓	D	25695 [illegible]
✓	E	25714 "Catano" - 7/[illegible]
✓	F	25791 "M.I. Saenz" - 7/[illegible]
✓	G	25716 "Catano" - 9/6/49 - $35.00
✓	H	25903 "M.I." - 9/[illegible]
✓	I	25913 "Catano" - 9/6/49 - $35.00
	J	26060 "M.I." - 9/[illegible]
✓ 110	K	26098 "Catano" - 10/6/49 - $35.00
✓	L	26226 [illegible]
✓	M	26246 "M.I." - 10/[illegible]
✓	N	26296 "Catano" - 10/[illegible]
✓	O	26344 "M.I." - 11/[illegible]
✓	P	26[illegible]
✓	Q	26[illegible]
✓	R	26[illegible]
✓	S	26[illegible]

For Identification See Page 35

[illegible]
COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

VS

George B. Parker

CR NO. 2022

20 Yrs

EXHIBITS

NOS. Gov't.		DESCRIPTION			
✓ 110	✓ I	325 Pen & Mainf. Cert. #27442 Cotton	4/26/50	$60.00	Disp
✓	✓ J	" " " 28152 "	8/7/50	$35.00	"
✓	✓ L	" " " 27638 M.I.	4/26/50	$60.00	"
✓	✓ M	" " " 27664 Cotton	4/26/50	$35.00	"
✓	✓ X	" " " 27600 M.I.	4/26/50	$60.00	"
✓	✓ Y	" " " 27624 Cotton	4/26/50	$35.00	"
✓	✓ Z	" " " 27296 "	4/26/50	$35.00	"
✓	✓ AA	" " " 27454 M.I.	4/26/50	$60.00	"
✓	✓ BB	" " " 27512 Cotton	5/19/50	$35.00	"
✓	✓ CC	" " " 27702 "	5/26/50	$200.00	"
✓	✓ DD	" " " 27675 M.I.	5/26/50	$60.00	"
✓ 115	✓ EE	" " " 27709 Cotton	6/13/50	$35.00	"
✓	✓ FF	" " " 29314 M.I.	6/13/50	$60.00	"
✓	✓ GG	" " " 27779 Cotton	7/17/50	$35.00	"
✓	✓ HH	" " " 27857 M.I.	7/21/50	$60.00	"
✓	✓ II	" " " 27879 Cotton	8/7/50	$35.00	"
✓	✓ JJ	" " " 27980 M.I.	8/21/50	$60.00	120.00 Disp
✓	✓ KK	" " " 27998 Cotton	9/11/50	$35.00	Disp
✓	✓ LL	" " " 28107 "	10/3/50	$35.00	"
✓	✓ MM	" " " 28363 "	11/13/50	"	"
✓	✓ NN	" " " 28534 "	12/19/50	"	"
✓	✓ OO	" " " 28669 "	1/29/51	"	"
✓	✓ PP	" " " 28845 "	2/14/51	"	"
✓	✓ QQ	" " " 29013 "	3/13/51	"	"
✓	✓ RR	" " " 29173 "	4/12/51	"	"
✓	✓ SS	" " " 29395 "	5/15/51	"	"
✓	✓ TT	" " " 29521 "	6/15/51	"	"

For continuation See Page 30

Thos. A. Kerr Jr.

COURTROOM CLERK

(Continued on Page 21)